

1 A. I could look at up to ten.

2 Q. Now, if you turn to page two of the plea
3 agreement, and there's a paragraph that begins
4 "fifth". Do you see that? It's on the typed page
5 two.

6 A. Yes, I see it.

7 Q. Would you read that paragraph, please?

8 A. "Government agrees that the statement" --

9 MR. OTERI: I can't hear him.

10 A. "The Government agrees that the
11 statements, information, evidence and testimony that
12 your client provides pursuant to this agreement
13 cannot be used either directly or indirectly against
14 his brother Joseph Capano or his sister Marion."

15 Q. Why did you ask for that term to be put
16 in the plea agreement?

17 A. Because I didn't know if they had said
18 anything or not said anything to get them in trouble,
19 and I was just trying to protect everybody.

20 Q. Then paragraph six, or right after that,
21 it says "The Government will not prosecute Edward
22 Delcollo for unlawful possession of firearms."

23 Who is Edward Delcollo?

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1 A. He's my best friend.

2 Q. Why did you want the Government not to
3 prosecute him?

4 A. Because of me they raided his house.

5 Q. And why would that cause him to be in any
6 harm?

7 A. They found all his hunting guns.

8 Q. Do you know who purchased one of those
9 guns?

10 A. I may have.

11 Q. Are you aware it's illegal to purchase a
12 gun for a convicted felon?

13 A. Yes.

14 Q. Now, other than your attorney, had you
15 discussed -- did you discuss before November 8, 1996,
16 the conversations that you've testified about that
17 you had with your brother Tom? Had you discussed
18 that with anybody other than your attorney?

19 A. Not in detail. I did with my attorney.

20 Q. But had you discussed them with anybody
21 else?

22 A. Yes.

23 Q. Who was the person you discussed them

1 with?

2 A. My friend Rudy, Rudy Dryden.

3 Q. Had you discussed them with any family
4 members?

5 A. I told my brother Louis.

6 Q. Do you recall when you told your brother
7 Louis?

8 A. I know it was around the holidays. It
9 was chilly out. I remember it was at my house at 7
10 Emma.

11 Q. What holiday season are you talking
12 about?

13 A. I'm not real sure, Mr. Connolly. I know
14 it was chilly out. I can remember what he was
15 wearing. I'm not real sure on the exact dates.

16 Q. Have you ever used cocaine?

17 A. Yes.

18 Q. Have you ever used marijuana?

19 A. Yes.

20 Q. Did you use cocaine and marijuana on a
21 frequent basis in 1995 and '96?

22 A. I did.

23 Q. Has the amount of cocaine you used

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1 affected -- strike that. I'm sorry, I'll withdraw
2 the question.

3 Did the amounts you used change after
4 June 28, 1996?

5 A. It did. I used more.

6 Q. Why?

7 A. Excuse me?

8 Q. Why?

9 A. For me it relieves a lot of stress.

10 Q. About how much cocaine on average were
11 you using in '95 and '96, before June 28, 1996?

12 A. Gram or two a week. Sometimes I would do
13 more; some weeks I would do less. Some weeks I
14 wouldn't do any at all. But on an average, one or
15 two grams a week.

16 Q. How about after June 28th?

17 A. Two to four. But, again, sometimes I
18 would do it; sometimes I wouldn't do it. Sometimes I
19 would do more. Sometimes I would do less. On an
20 average, it increased.

21 Q. Do you know whether you were high on
22 cocaine or any other substance when your brother Tom
23 had the conversations with you that you've testified

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1 had it written down, did you?

2 A. Excuse me, I never told Tom that I had

3 it --

4 Q. That you had written down this alibi?

5 A. I don't know if I did or I didn't.

6 Q. All right. Now, sir -- now, sir, your

7 brother Tom, when was the last time you talked to him

8 before June 28th, that Friday?

9 A. I don't know.

10 Q. Okay. You had not had any meetings set

11 up for June 28th with Tom in advance?

12 A. Oh, no.

13 Q. And Tom had not called you at any time

14 and said be there on the 28th, I'm going to be there?

15 A. No.

16 Q. Matter of fact, Tommy knew you spent most

17 of your time down at the beach during the summer,

18 correct?

19 A. That's correct.

20 Q. He had no way of knowing you were going

21 to be home, correct?

22 A. Yes.

23 Q. Okay. And on the drive down to Stone

1 A. Tom has never told me what happened.

2 Q. You do remember that Tom never told you

3 what happened?

4 A. Yes, I do remember that.

5 Q. And you do remember, and you have

6 testified in the past, that you don't know what the

7 motive was for what happened with that lady?

8 A. Yes, that's true.

9 Q. You don't know if there was a weapon

10 involved?

11 A. That's true.

12 Q. You don't know whether her death was

13 intentional?

14 A. That's true.

15 Q. You don't know whether it was just a

16 reckless act that resulted in her death?

17 A. That's true.

18 Q. You don't know whether it was a negligent

19 act?

20 A. That's true.

21 Q. And you don't know whether it was an

22 accident?

23 A. I don't know what happened, Mr. Oteri.

1 Harbor -- by the way, Tommy was driving at about 80

2 miles an hour?

3 A. He was driving fast.

4 Q. And you had to slow him down?

5 A. I think so. I'm not real sure. I'm not

6 real sure about that.

7 Q. He was very agitated and very upset, he

8 was very high strung?

9 A. Yes, at that point I think we both were

10 agitated and upset.

11 Q. He was not the calm, reasoned, rational

12 lawyer that you know?

13 A. That's correct.

14 Q. He was a guy running around like a nut?

15 A. He was very nervous.

16 Q. Now, sir, when you were driving down to

17 Stone Harbor with Tom in the car, you asked Tom what

18 happened and he wouldn't tell you, correct?

19 A. I don't know if that -- I don't remember

20 that. I mean --

21 Q. You don't remember that?

22 A. No.

23 Q. You do remember --

1 Q. Now, when Mr. Connolly asked you

2 yesterday if Tommy told you that her death was the

3 result of an accident, you said he hadn't told you?

4 A. He did not tell me.

5 Q. He didn't tell you anything?

6 A. That's right. He didn't tell me

7 anything.

8 Q. All right. Now, sir, when you came back

9 in on the 28th from the ocean, you ended up going bar

10 hopping that night, correct?

11 A. Yes, sir.

12 Q. Did you go out with Eddie Delcollo?

13 A. Excuse me?

14 Q. Did you go out with Eddie Delcollo?

15 A. Delcollo.

16 Q. Delcollo?

17 A. Yes, sir.

18 Q. And you did some drinking?

19 A. Excuse me?

20 Q. You did some drinking?

21 A. A lot.

22 Q. You did some drugs?

23 A. I may have.

1 A. I think Tom was more mad about it than I
2 was.

3 Q. But you were pretty mad, were you not, to
4 suddenly find yourself in the papers accused of being
5 an unfit parent?

6 A. That's a joke. I'm not an unfit parent.

7 Q. But you were upset by it, were you not?

8 A. You would be too, I think.

9 Q. Gerry, you are absolutely right. I would
10 be. But you were upset?

11 A. Sure, it's fair to say.

12 Q. Now, Gerry, do you remember making a
13 phone call and leaving this message on February 9th,
14 1998, to your mother:

15 Mom, this is your son Gerry. I called
16 you but Katie hung up on me. Then I called again,
17 and her little asshole boyfriend hung up on me. You
18 have ten minutes to call me back. If you don't, you
19 can go fuck yourself.

20 Do you remember making that call to your
21 mother?

22 A. I was drinking that day, and I remember
23 apologizing afterwards.

1 Q. But you did make the call?

2 A. I'm not saying I didn't.

3 Q. And you apologized for it afterwards,
4 correct?

5 A. It's not nice to talk to my mother like
6 that. I was drinking and very upset.

7 Q. And you do things when you're drinking
8 and upset?

9 A. I made a mistake.

10 Q. How about the second call, Gerry. Do you
11 remember this? Do you remember saying this?

12 Mom, this is your son. Mom, your son
13 Gerry. You better fucking call me. I'm tired of
14 being the bad guy. If you don't fucking call me,
15 you'll never fucking see me or my wife or my kids
16 again. What, are you pissed because I told the
17 truth? Because Joe fucking Hurley couldn't break me
18 down? As far as I'm concerned, you have three sons.
19 One is a murderer in jail for fucking life, one you
20 hate and that's Louie, and Joey. Like I said, you
21 can go fuck yourself. Did you really think that I
22 would go to jail for 12 fucking years? If you
23 thought I was bad on the stand, God fucking help you

1 if this goes to trial. I'll think up even more shit
2 to keep my ass out of fucking jail. And I'll make up
3 fucking shit as I go along to keep Tommy in there for
4 fucking life. I hate him. You got ten fucking
5 minutes to call me back or you'll never see my kids
6 again. I'm not threatening you, but if you don't
7 call me back in ten minutes, you can go fuck
8 yourself. My number is 561 361-4145.

9 Did you make that call and make that
10 statement, Gerry?

11 A. I'm sure I did, if you have it on tape.

12 MR. OTERI: Thank you. I have no further
13 questions, Your Honor.

14 MR. CONNOLLY: I have a few questions,
15 Your Honor.

16 First of all, I'd like to at this point
17 move to admit the entire proof positive hearing
18 transcript into evidence.

19 MR. MAURER: Your Honor, during the lunch
20 hour, could I review it again and take a position?

21 THE COURT: All right. Do we need to do
22 that at this time?

23 MR. CONNOLLY: I'm happy to wait until

1 after lunch.

2 THE COURT: Do you have redirect of this
3 particular witness?

4 MR. CONNOLLY: I have. I do have
5 redirect.

6 THE COURT: And how long do you
7 anticipate it will take?

8 MR. CONNOLLY: More than five minutes.

9 THE COURT: All right. Then we'll take
10 the luncheon recess. You can take the jury out. We
11 will reconvene, hopefully, at two o'clock.

12 (The jury left the courtroom at 12:52
13 p.m.)

14 THE COURT: Would everybody in the
15 courtroom, except the jury, please be seated. Anyone
16 who is up will be not be admitted back into the
17 courtroom again.

18 Counsel want to make argument on this
19 issue before the luncheon break or afterwards?

20 MR. MAURER: I'd like, assuming I'm the
21 one, afterwards, Your Honor.

22 THE COURT: Then I would suggest we meet
23 in chambers at quarter of two.

1 A. Yes, I have.
 2 Q. And you signed a document?
 3 A. Yes, I have.
 4 Q. Have you actually gone into court and
 5 entered your plea yet?
 6 A. No, I have not.
 7 MR. WHARTON: Your Honor, I think,
 8 without objection, we would offer as the State's next
 9 exhibit Mr. Capano's written plea agreement.
 10 MR. MAURER: It is without objection,
 11 Your Honor.
 12 THE COURT: All right. It may be so
 13 marked and admitted as State's Exhibit 124.
 14 THE CLERK: So marked.
 15 (Whereupon State's Exhibit No. 124, Louis
 16 Capano's plea agreement, was received into evidence.)
 17 THE COURT: Thank you.
 18 BY MR. WHARTON:
 19 Q. Mr. Capano, let me show you State's
 20 Exhibit 124 and ask you to take a look at that. Is
 21 that, in fact, the agreement in which you entered
 22 with the Federal Government?
 23 A. Yes, it is.

1 A. That my agreement would be severed, I
 2 suppose, and I could be prosecuted for other crimes.
 3 Q. You have testified in front of a Federal
 4 Grand Jury, have you not?
 5 A. Yes, I have.
 6 Q. In connection with this case?
 7 A. Yes, I have.
 8 Q. How many times have you testified?
 9 A. Three times.
 10 Q. Was the first one on August the 29th of
 11 1996?
 12 A. Yes, it was.
 13 Q. And the second one was that on October
 14 the 8th of 1996?
 15 A. Yes.
 16 Q. And the last one, was that on November
 17 12th of 1997?
 18 A. Yes, it was.
 19 Q. And each time you testified, did that
 20 testimony relate in some fashion to your brother
 21 Thomas?
 22 A. Yes, it did.
 23 Q. Now, is he -- how does he fit in in the

1 Q. And it indicates that you're going to be
 2 entering a guilty plea to a particular crime, does it
 3 not?
 4 A. Yes, it does.
 5 Q. What is that crime to which you're going
 6 to be entering a guilty plea?
 7 A. Tampering with a witness.
 8 Q. Is there a sentence which you -- which
 9 the Federal Government is going to recommend that you
 10 receive as a result of entering that guilty plea?
 11 A. Yes, there is.
 12 Q. What is that sentence?
 13 A. One year probation.
 14 Q. Now, do you have any obligations yourself
 15 under that plea agreement?
 16 A. Just to tell the truth.
 17 Q. And you're required to testify truthfully
 18 if called upon by the Government?
 19 A. Yes, that's correct.
 20 Q. Now, if you do not testify truthfully
 21 when called upon to do so by the Government, what do
 22 you understand the consequences of that failure to
 23 be?

1 chronological range of your family, of your siblings?
 2 A. He's the oldest brother, the second
 3 sibling, second child.
 4 Q. Second child. You have a sister who is
 5 older than he is?
 6 A. My sister Marion is the oldest, then Tom,
 7 then myself, my brother Joseph, and my brother
 8 Gerard.
 9 Q. What is the age difference between you
 10 and your brother Thomas?
 11 A. Tom and I are two years apart.
 12 Q. And between you and Joseph?
 13 A. One year apart to the day.
 14 Q. How about that.
 15 Between Joseph and Gerard?
 16 A. I think ten years.
 17 Q. How about you and Gerard?
 18 A. Eleven years.
 19 Q. Okay. He's sort of the baby of the
 20 family?
 21 A. Yes, he is.
 22 Q. I want to direct your attention to July
 23 the 30th of 1996. Do you recall -- I misspoke, I saw

1 the look on your face. I meant June the 30th. My
 2 fault. June the 30th of 1996. I'll ask you if you
 3 had a conversation or any communication with your
 4 brother Thomas on that date?

5 A. Sunday?

6 Q. Yes, that would be a Sunday.

7 A. Tom called me mid-morning at my house and
 8 asked me to go over to his house on Grant Avenue,
 9 that he wanted to talk to me about something.

10 Q. Did you do that?

11 A. I did.

12 Q. When you got there, who was there?

13 A. Tom was there and his four daughters
 14 and -- my four nieces.

15 Q. Did you have a conversation with him?

16 A. Yes, Tom and I went back to an enclosed
 17 porch in the back of the house and he then told me
 18 about his relationship with Anne Marie Fahey.

19 Q. Did you know that he had had a
 20 relationship with Anne Marie Fahey --

21 A. No, I did not.

22 Q. -- before he told you on that date?

23 A. No, I did not.

1 Q. Did you know that he had had -- had or
 2 was having a relationship with anyone at that point?

3 A. No, I did not.

4 Q. You were aware of his marital status at
 5 that time?

6 A. I knew he was separated from his wife
 7 Kay, but I wasn't aware of any -- any extramarital
 8 affairs at all.

9 Q. Did you know Debbie MacIntyre?

10 A. Yes.

11 Q. And how did you know her?

12 A. I'm sorry?

13 Q. How did you know her?

14 A. I've known her for years. She teaches
 15 at, or taught at, Tatnall School, and my son Louis
 16 the third went there, and I've known her.

17 Q. And you did not know of any relationship
 18 between your brother and Debbie MacIntyre?

19 A. None whatsoever.

20 Q. What did he tell you about this
 21 relationship with Anne Marie Fahey on June the 30th?

22 A. He told me he had been seeing her for a
 23 couple of years, that she was anorexic and bulemic

1 and suicidal, and that he had ended the relationship,
 2 and that he was seeing a psychiatrist with his wife,
 3 Kay, and that he had taken her for dinner on Thursday
 4 night in Philadelphia and that the police had gone to
 5 his house on Saturday in the morning, I guess, Sunday
 6 morning, two a.m. or three a.m.

7 Q. During the middle of the night?

8 A. During the middle of the night. And had
 9 questioned him about her whereabouts. And since he
 10 was the last one to be seen with her, he was
 11 concerned that they suspected of him some wrongdoing.

12 Q. Now, this relationship with Anne Marie
 13 Fahey, I think you indicated that he said that they
 14 had -- they had broken up, or they were not seeing
 15 each other?

16 A. Yes, he told me that.

17 Q. But they had dinner on Thursday night
 18 previous?

19 A. Right.

20 Q. Did he describe to you what the nature of
 21 that relationship with her was at that time?

22 A. He said at that point they were good
 23 friends and he had even given her money to seek help

1 for bulimia, or whatever, and that was the extent of
 2 their relationship at that point.

3 Q. Okay. That help that he was referring
 4 to, was that psychological help?

5 A. Yes.

6 Q. Did he tell you whether or not his wife
 7 Kay knew of this relationship he had with Anne Marie
 8 Fahey?

9 A. No, he told me that she did not know, and
 10 he did not want her to know. He was seeing a
 11 psychiatrist with Kay and they were trying to
 12 reconcile their marriage.

13 Q. Well, did he tell you -- you've told us
 14 that he told you that he was questioned by the police
 15 about Anne Marie Fahey's disappearance?

16 A. Yes, he told me that.

17 Q. What did he tell you -- and then that he
 18 told you they had had dinner on Thursday night?

19 A. That's correct.

20 Q. What did he tell you about his activities
 21 that night with Anne Marie Fahey?

22 A. He told me that after dinner they had
 23 gone to his house, and that while he was upstairs

1 using the men's room that when he went downstairs
 2 that Anne Marie Fahey had slit her wrists and got
 3 blood on the sofa. And I asked him if he had taken
 4 her to the hospital, and he said they were
 5 superficial wounds and that he had bandaged them up
 6 and took her home.

7 Q. Do you recall if he told you when he
 8 returned from Philadelphia or when he took her home;
 9 either of those two?

10 A. I don't think he ever told me when he
 11 returned from Philadelphia. I believe he told me he
 12 took her home nine or ten o'clock.

13 Q. Now, these wounds that she sustained, did
 14 he tell you whether or not she bled, as a result of
 15 those wounds?

16 A. Yes, he said she bled.

17 Q. And where did he tell you that she bled?

18 A. On the sofa.

19 Q. Were you familiar with that sofa?

20 A. No, I was not.

21 Q. To your knowledge -- did you know what
 22 room in the house it was in?

23 A. No, I had never been in the house before

1 Q. And that he had done this with your
 2 brother Gerry?

3 A. Yes.

4 Q. Now, as of Sunday, he told you that the
 5 police told him that Anne Marie Fahey was missing?

6 A. That's correct.

7 Q. Did he tell you whether or not he
 8 expected Anne Marie Fahey to appear?

9 A. Yes, he told me that he had given her
 10 money and she was planning to take Friday off and
 11 that he suspected that she was just away for the
 12 weekend at the beach and that she would show up on
 13 Monday.

14 Q. Now, this meeting that you had with him
 15 on Sunday, who initiated that?

16 A. He did. He called my house.

17 Q. He told you that he expected that Anne
 18 Marie Fahey would be back to work on Monday?

19 A. I'm sorry, I was confused. I thought you
 20 meant who initiated the meeting at his house on
 21 Sunday.

22 Q. That's right.

23 A. He initiated that.

1 on Grant Avenue. That was the first time.

2 Q. What did he tell you he did with the
 3 sofa?

4 A. He told me that he and my brother Gerry
 5 put the sofa in one of our dumpsters on Foulk Road
 6 and Concord Pike where we were building the First USA
 7 space.

8 Q. Where is that in relation to your office?

9 A. We're in the same office complex. It's a
 10 hundred yards away from my particular building.

11 Q. And were you familiar with what he was
 12 talking about when you refer to those dumpsters?

13 A. Yes, I was.

14 Q. Was there more than one dumpster at that
 15 site?

16 A. I believe there were two or three.

17 Probably three.

18 Q. Did he tell you at that time whether or
 19 not he had put any other things in the dumpster
 20 besides the couch?

21 A. He told me he put some of her personal
 22 belongings, like a nightgown and a hair brush,
 23 something like that.

1 Q. And he told you that Anne Marie Fahey
 2 would be at work on Monday?

3 A. Yes. At the meeting on Sunday he told me
 4 that.

5 Q. Right. After that conversation concluded
 6 with your brother at his house, did you actually go
 7 look at the dumpster?

8 A. Yes, I went up to the job site and I was
 9 curious enough to look in the dumpster, and I saw
 10 something that could have been a sofa or a chair. It
 11 was turned upside down and mostly covered with
 12 construction debris, but I did see two legs
 13 upside-down, like the leg of a chair, or the leg of a
 14 sofa, just about this much.

15 MR. WHARTON: Your Honor, I think without
 16 objection, the State would offer this photograph as
 17 the next State's Exhibit.

18 MR. MAURER: Agreed, Your Honor. No
 19 objection.

20 THE COURT: Thank you, Mr. Maurer. That
 21 would be State's Exhibit Number 125. It is admitted
 22 without objection.

23 THE CLERK: So marked.

(Whereupon State's Exhibit No. 125,

photograph, was received into evidence.)

THE COURT: Thank you.

BY MR. WHARTON:

Q. Mr. Capano, let me show you State's Exhibit 125. Do you recognize what's depicted in the photograph?

A. Yes, I do.

Q. What is it in the photograph?

A. They're the office buildings that First USA occupies.

Q. The actual dumpsters, the location of the dumpsters, is that visible in the photograph?

A. No.

Q. Where, if you could orient the dumpsters, are they?

A. Well, there was a dumpster in the front of this one building on the left side of the picture, but there were -- there were -- there was at least a dumpster or two dumpsters behind the building.

Q. The dumpster you looked in, where was that?

A. It was behind the building on the left.

you he and your brother Gerry had placed the couch?

A. He told me to have it dumped on Monday morning.

Q. What's that process, I mean when you dump a dumpster?

A. Usually the superintendent or somebody who is running the construction job would call the company that -- the garbage company, and they would just come with a truck and basically pull the dumpster out, take it to the landfill, I guess.

Q. These dumpsters that we're talking about, I guess dumpsters come in different shapes and sizes. Can you describe this particular type of dumpster?

A. I would say that this dumpster was about five feet tall on three sides and opened -- and long and narrow and opened at one end of it.

Q. Long and narrow, kind of like, where they're sitting, and open here?

A. Right. Up about five feet.

Q. Not one of those with the top that sort of --

A. No. No.

Q. Monday morning did you recall what he

Q. You said you saw something in there. How much of a piece of furniture did you see?

A. I really only saw two legs, about this long.

Q. Okay.

A. And the sofa was upside-down.

Q. And you saw two legs. What prevented you from seeing anymore of what was attached to the legs?

A. The sofas were covered by construction debris, drywall, things like that.

Q. Did you speak with your brother anymore that day?

A. Yes, Tom called me later in the day, later in the afternoon, to tell me that when he took his children home to 17th Street where his wife Kay -- where they live, that the police were waiting for him there when he dropped the girls off, and that they wanted to go back to his Grant Avenue house and look through the house and search the house, and he called me, and I recommended at that time that he hire an attorney.

Q. Now, did he tell you what he -- what, if anything, to do about that dumpster where he had told

wanted you to do? Did you have the dumpster pulled?

A. Frankly, I had forgotten all about it.

It really wasn't a priority. I didn't really see the -- I didn't see the urgency in any of it at all.

And Tom called me mid-morning, I don't know, nine or ten o'clock, I don't remember exactly, and told me that she had not shown up for work.

Q. "She" would be?

A. Anne Marie had not shown up for work, and asked me if I had dumped the dumpsters, and I said, No. He said, Could you get the dumpsters dumped? And I said, Sure, and I did.

Q. How did you arrange for that to be done?

A. Well, I called Chris Nolan who works for me, and he called Karen Feeney, and Karen Feeney called Shaw Taylor, and Shaw Taylor told Dick Armstrong, and Dick Armstrong told my son Louis the third, who happened to be working there for his college break, and that's what happened.

Q. Okay. After you had the dumpster dumped with that chain of people involved in having it done -- is everything that complicated in the developing business?

1 A. Well, the dumpsters --

2 Q. That's okay.

3 A. The dumpsters weren't full.

4 MR. MAURER: Maybe I should object, so we
5 don't have to get into it.

6 THE WITNESS: I'm sorry.

7 BY MR. WHARTON:

8 Q. You said the dumpsters weren't full?

9 A. Yes.

10 Q. Okay. Now, after, or at some point, did
11 you become aware of any significant publicity
12 regarding this dinner your brother had had with Anne
13 Marie Fahey and the fact that she was missing?

14 A. Yes, within a couple of days publicity
15 was rather great.

16 Q. And did you have any more conversations
17 with your brother about whether Anne Marie Fahey
18 would appear shortly or soon, or if at all?

19 A. Yes, Tommy always told me that -- he
20 swore to me that he took her home, that she was
21 probably away. She used to work in Washington, D.C.
22 with congressmen and that she had friends from all
23 over the country, and that he was sure that she was

1 do with the bridges, the Delaware Memorial Bridges.

2 Q. Delaware Bay Authority?

3 A. Yeah, I think he's head of the River and
4 Bay Authority.

5 Q. Who is Bob Harkins? You may have said
6 Parkins. I call him Bob.

7 A. I don't know what he does now. He used
8 to work with Tommy when Tom worked for the governor's
9 office.

10 Q. Would it be fair to say that at least one
11 of the reasons for this meeting was to discuss a
12 public relations strategy for dealing with the bad
13 publicity your brother was getting?

14 A. That was the purpose of the meeting at
15 the time, yes.

16 Q. Now, at any time during this meeting did
17 your brother say to the group that had been assembled
18 there that this was an accident?

19 A. No, he did not.

20 Q. How long did the meeting last?

21 A. It lasted an hour or so.

22 Q. Did you become aware that your brother's
23 home on Grant Avenue had been the subject of a search

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1 just an unhappy, troubled woman, and that she was
2 just away, maybe even getting help for her bulimia,
3 whatever, and that she would show up sooner or later.

4 Q. Did he report to you any purported
5 sightings of Anne Marie Fahey?

6 A. Yes, one time in particular he told me
7 that she was spotted at the Newark International
8 Airport.

9 Q. That's in Newark, New Jersey?

10 A. Newark, New Jersey.

11 Q. Do you recall going to a meeting with
12 your brother Thomas attended by a number of other
13 people at Mr. Oberly's office?

14 A. Actually, I think it was at Bart Dalton's
15 office.

16 Q. Okay. I'm sorry. And do you remember
17 some of the people who were there?

18 A. I believe Bart Dalton was there and Mike
19 Harkins was there, and a fellow named Parkins I think
20 was there, and maybe Brian Murphy, myself.

21 Q. Mike Harkins is -- who is he?

22 A. He's a former Secretary of State, and I
23 think he is, I guess his title is -- has something to

1 warrant, the execution of a search warrant?

2 A. Yes.

3 Q. Where did your brother live after the
4 institution of that search warrant?

5 A. He lived at my house.

6 Q. Did he move in directly after the search
7 warrant?

8 A. Yes, he did. I believe he moved in that
9 same night.

10 Q. Did you also become aware that there were
11 searches being conducted of several dump sites?

12 A. Yes.

13 Q. Did your brother ever tell you any
14 objects that might be found during these searches of
15 the dump sites?

16 A. Well, when they were searching the dump,
17 he told me that he had thrown a gun in the dumpster
18 and that he -- and that he hoped they found it in the
19 dump because it would prove that it had never been
20 shot.

21 Q. Now, did you know your brother to be
22 someone who possessed guns?

23 A. No.

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1 Jim Florio did a stop by because he had an event prior
 2 to our event that was being hosted by attorneys.

3 Q. Did Mr. Capano's firm at the time sponsor in
 4 any way that fund raiser?

5 A. I have no idea.

6 Q. Or a fund raiser for Governor Florio held
 7 around the same time?

8 A. For your first question, did you mean did we --
 9 did his firm sponsor our event?

10 Q. Yes.

11 A. No, they did not.

12 Q. Did I hear you correctly say you don't recall
 13 who introduced you to Tom Capano?

14 A. No.

15 Q. Could it have been one of the Governors, Florio
 16 or Carper?

17 A. It's too long ago to remember.

18 MR. O'DONNELL: Well, I won't ask anymore
 19 questions about it.

20 MR. CONNOLLY: No further questions. The
 21 witness may be excused.

22 MR. WHARTON: State calls Siobhan Sullivan.

23

1 SIOBHAN SULLIVAN,
 2 the witness herein, having first
 3 been duly sworn on oath, was examined
 4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WHARTON:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Who do you work for?

10 A. Delaware State Police.

11 Q. How long have you been with the Delaware State
 12 Police?

13 A. Just short of 12 years.

14 Q. Right now what is your assignment with the
 15 police?

16 A. Executive protection or for the Governor.

17 Q. How long have you been doing that work?

18 A. Little over five and a half years.

19 Q. When did you begin doing that?

20 A. His first election, '92.

21 Q. Was there interruption in your service?

22 A. Yes, February '98 to September '98.

23 Q. You were doing other work for the State Police

1 at that time?

2 A. Yes. Back at Troop 9 in Odessa.

3 Q. What were your responsibilities with the
 4 Executive Security Unit as related to the Governor?

5 A. We protect the family as well as the Governor.

6 But the day I would be working with the Governor, I
 7 would pick up the Governor at his residence. Knowing
 8 his schedule prior to the day before I would pick up the
 9 Governor, I would contact Anne Marie who was the
 10 scheduler for the Governor and learn about his schedule.
 11 So I would have the Governor's schedule ahead of time
 12 through Anne Marie. And I would pick up the Governor
 13 that day or I would drive and protect him to every event
 14 until his duration that night.

15 Q. When he was not at an event, but rather in one
 16 of his offices, would you also be at the office?

17 A. I'm sorry, I didn't hear you.

18 Q. Let's say he was not at an event and he was at
 19 an office -- He had an office in Wilmington; is that
 20 right?

21 A. Yes.

22 Q. And did he also have an office in Dover?

23 A. Yes. Tatnall Building.

1 Q. When he was at one of those building where were
 2 you?

3 A. With him. We have an office in both buildings.

4 Q. So if the Governor is at work in the office you
 5 are at that office?

6 A. That's correct.

7 Q. You mentioned Anne Marie. You knew Anne Marie
 8 Fahey; is that correct?

9 A. Yes, I did.

10 Q. How is it you got to know her?

11 A. I met Anne Marie the first day I joined the
 12 Governor's staff Executive Protection. Like I said she
 13 was his right-hand person, his scheduling secretary.

14 Q. How closely did you work with-- I mean, I'm
 15 talking about you plural, like the Executive Security
 16 Unit, work with her?

17 A. I would say, to compare it, the Governor looks
 18 at us as his right-hand person and know his day is going
 19 to go well because we are there. He has a lot of trust
 20 in us. I would look at Anne Marie as my right-hand
 21 person where she is setting my day so my day would flow
 22 correctly to the Governor.

23 Q. You had to have a lot of contact with her?

1 A. Yes. One on one.

2 Q. At some point, would you say that you became
3 friendly with her?

4 A. Yes, I did.

5 Q. At some point -- Well, first of all, let me
6 back up. Did you know the defendant?

7 A. Yes, I did.

8 Q. And how was it that you met him?

9 A. Anne Marie Fahey introduced me on an occasion
10 down at Woodburn, which is a mansion to the Governor.
11 They had an event there and Anne Marie introduced me to
12 Tom Capano.

13 Q. Prior to your introduction by her, did you know
14 that they were friends?

15 A. Yes, I did.

16 Q. How did you know that?

17 A. Anne Marie and I used to always talk when we
18 were in the Governor's office. And she was saying she
19 was going to a concert or possibly going to an event
20 which was a pretty high event with the Governor's
21 office. And I would joke around with her, where did you
22 get tickets? Tell me. And she would say Tom Capano
23 bought her the tickets.

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1 Q. Do you know whether she considered him a close
2 friend of hers?

3 A. Yes. Throughout our friendship, prior to Anne
4 Marie disappearing, she would say that she looked at Tom
5 Capano as one of her best friends and she would talk to
6 him occasionally.

7 Q. At some point, did she tell you about perhaps,
8 leaving the Governor's office?

9 A. Yes. That was around spring of '95. She had
10 told me that-- Let me go back. It is very stressful in
11 what our jobs are with the Governor between security and
12 executive scheduler. Mine would be stress would be
13 safety-wise, Anne Marie's stress level would be she had
14 to make sure the schedule went -- flowed correctly for
15 the Governor. And we had a lot of stress. We probably
16 have the most stress of anybody in the office I would
17 say. And she had told me that Tom Capano had offered
18 her a job at Louie Capano's office.

19 Q. When did you say that was?

20 A. Spring of '95.

21 Q. Obviously she didn't take that job?

22 A. No, she did not.

23 Q. Did --

1 MR. MAURER: Can I interrupt for a moment to
2 consult with counsel?

3 THE COURT: Certainly.

4 MR. MAURER: Can we take just a moment, your
5 Honor?

6 THE COURT: Certainly.

7 THE COURT: Mr. Wharton.

8 BY MR. WHARTON:

9 Q. I think what I last asked you about was this
10 job offer Anne Marie told you was being made, or
11 attempted to be made, by the defendant with his brother
12 Louis Capano's business and she did not ultimately
13 accept that job, correct?

14 A. Yes.

15 Q. She stayed with the Governor's office?

16 A. Yes.

17 Q. So you knew she didn't take the job. Did you
18 have a conversation with the defendant himself?

19 A. Yes, I did.

20 Q. How did that conversation get initiated?

21 A. Tom Capano would usually call me on my pager
22 and leave a phone number for me to call him back. And I
23 received a page and returned Tom Capano's call.

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1 Q. He had paged you and you returned his call?

2 A. Yes.

3 Q. And what did he tell you?

4 A. He asked me -- there was different times that
5 Mr. Capano had called me over several occasions and a
6 lot of times he would ask if I wanted to get out and get
7 a beer. It was always when I got done work that night
8 with the Governor. And he knew I coached basketball and
9 wanted me to help his kids, coach them in some
10 basketball. And at that time he wanted to know if I
11 wanted to go get a beer and talk about basketball. I
12 said no, I had a long day, I need to get home. At which
13 time he asked if I had spoken to Anne Marie today. And
14 he said, "She's really mad at me."

15 And I said, "You have to just let her be, Tom."

16 And he goes, "You know I left my wife and I'm
17 just really lonely right now."

18 Q. And did he indicate whether or not they had an
19 argument of some sort?

20 A. Yes. He stated that they had a fight that day
21 and Anne Marie was really mad at him.

22 Q. Did he also indicate to you whether he did, in
23 fact, do anything about trying to get her a job with his

1 brother?

2 A. When I talked-- We talked about the stress
 3 level of the Governor's office. And Tom also talked to
 4 me that he offered Anne Marie a job at his brother's
 5 Louie's office, and Anne Marie refused to take the job.

6 Q. When did you next see Anne Marie Fahey?

7 A. I know I was off that weekend, so it had to be
 8 soon after that. We usually work every couple days
 9 after, so it had to be the following week.

10 Q. Do you know if that was before Christmas of '95
 11 or after?

12 A. It was before Christmas of '95.

13 Q. Did you tell her about your conversation with
 14 the defendant?

15 A. Yes. I always told Anne Marie when Tom Capano
 16 would call me. And at that certain time Anne Marie
 17 became very upset.

18 Q. What did she tell you?

19 A. When I told her Tom Capano called me and paged
 20 me and asked if I had talked to her and he told me that
 21 Anne Marie was very upset with him, and I told Anne
 22 Marie that, she said, "He is a possessive, controlling
 23 maniac. I'm just getting tired of him."

1 And stormed out of my office and went back to
 2 her office.

3 Q. Were you aware of whether or not she was around
 4 Memorial Day of 1996, whether she was going away?

5 A. Yes, I was.

6 Q. Where did you understand she was going?

7 A. She was going to the New England area with her
 8 boyfriend, Mike Scanlon.

9 Q. Did you have any-- You knew about Mike Scanlon?

10 A. Yes.

11 Q. Did you have any contact with the defendant
 12 around that time?

13 A. Yes, I did.

14 Q. Tell us about that contact.

15 A. Once again, I received another page, at which
 16 time Tom Capano had called me.

17 Q. Was this while she was away or before she went
 18 away?

19 A. While she was away.

20 Q. And he paged you?

21 A. I returned the page, and he asked me if I had
 22 talked to Anne Marie, and I said no. And he asked me if
 23 I knew where Anne Marie was and I said no. He kept it

1 very short, asked how I was doing. And basically we
 2 ended the phone conversation after how I was doing, what
 3 was I doing for the weekend.

4 Q. Now, did you talk with Anne Marie after she
 5 came back?

6 A. Yes, I did.

7 Q. And did you report to her that Tom Capano had
 8 inquired of you about her whereabouts?

9 A. Yes, I did. I told Anne Marie, once again, in
 10 our office that Tom Capano had paged me and was asking
 11 if I knew where she was or if I have talked with her.

12 Q. What was her response to you?

13 A. At that time, very adamantly said, "He's
 14 fucking stalking me."

15 And I tried to calm Anne Marie down. I said
 16 Anne Marie there is a charge, there's a crime against
 17 that, we can give you protection. We are here for the
 18 Governor, but we are also here for the staff and we can
 19 provide protection.

20 Q. What was her response?

21 A. At that time I think she felt she could handle
 22 it at that time and repeated that she had to end it with
 23 Tom Capano.

1 Q. Do you know when if she got back if she
 2 had -- did she tell you she had any concerns when she
 3 got back from new England?

4 A. When I told her about him paging me, she stated
 5 she was afraid Tom Capano was going to wait for her and
 6 she did not want Mike and Tom having a confrontation,
 7 she was afraid of that.

8 Q. Did she indicate whether Mike Scanlon knew
 9 about her relationship with Tom Capano?

10 A. Throughout our conversations, throughout our
 11 relationship with working and Tom Capano came up, she
 12 told me she did not tell Mike Scanlon about Tom Capano.

13 Q. Now, did you also talk to her about Mike
 14 Scanlon?

15 A. Yes.

16 Q. And what did she tell you about Mike Scanlon
 17 how she felt about him?

18 A. She felt very highly of Mike Scanlon. For a
 19 time there, the last year, Anne Marie was very down,
 20 looked very upset and down. And seemed like when she
 21 met Mike Scanlon her life came back into her. She
 22 wasn't as down in the office, looking forward to getting
 23 together with Mike Scanlon. She felt -- I felt with her

1 you don't transfer it to anyone. You just hold on to
 2 it, and if the F.B.I. shows up with a search warrant,
 3 then they're going to seize that anchor, but we're
 4 not going to play games with it.

5 There came a time when Gerry told me that
 6 he didn't have the anchor; that he had been requested
 7 by Tom to turn the anchor over to him or his lawyers
 8 so that Tom's lawyers could take a picture of the
 9 anchor, and from the memo I guess this was when I
 10 learned that Gerry didn't have the anchor even though
 11 I had told him to keep the anchor.

12 When I realized that Gerry had turned the
 13 anchor over to Tom, I told him in no uncertain terms
 14 to get that anchor back, put it right back in the
 15 garage where it was he was keeping it and leave it
 16 there.

17 Q. Now, between that meeting in June and
 18 October of 1997, what was the status of your strategy
 19 with Gerry as far as whether you were coming in to
 20 speak to the government or whether you were not
 21 coming in to speak to the government?

22 A. We went back and forth.

23 Q. You had not made a final decision one way

1 He said, "I'm doing great except I'm
 2 lying on the floor of my garage with my hands
 3 handcuffed behind my back, a gun pointed at my head
 4 and thirty F.B.I. agents rummaging through my house."

5 I said, "Oh". That's how I found out.

6 Q. Now, did you meet with him and talk about
 7 the ramifications of that search warrant being
 8 executed on his house?

9 A. Sure.

10 Q. Were you aware of whether or not any
 11 drugs were found during the execution of that search
 12 warrant?

13 A. I had been told that, if I have this
 14 straight, a small amount of marijuana was found, and
 15 perhaps a small amount of cocaine was found in his
 16 home or garage, but a very small amount, and that a
 17 little bit more, about two grams of cocaine had been
 18 found in his truck outside of the home. And we
 19 discussed that.

20 Q. Was he arrested?

21 A. He was not arrested. He was detained.

22 Q. Were you aware of whether that publicity,
 23 excuse me, whether that discovery of the cocaine and

1 or another?

2 A. Well, Gerry had not made a final
 3 decision. In my own mind --

4 MR. O'DONNELL: Objection. I don't know
 5 that that's relevant at this point.

6 THE COURT: All right. I'll sustain the
 7 objection.

8 Q. You had not committed -- at any rate
 9 Gerry Capano had not committed to you unequivocally
 10 that he was going to come in.

11 A. True.

12 Q. Were you aware in October that his house
 13 was searched?

14 A. I got a rather -- I was told in rather
 15 dramatic fashion.

16 Q. How did you become aware?

17 A. I was at my home. It was probably 7:30,
 18 8:00 at night. I think I was sitting down to dinner.

19 I got a phone call from Gerry at home
 20 which is not necessarily unusual and not that big a
 21 deal. I said -- Gerry was on the other end of the
 22 line.

23 I said, "How ya doing."

1 marijuana in his house precipitated any investigation
 2 by child protective agencies working for the State of
 3 Delaware?

4 A. Yes, I was.

5 I don't remember how quickly, but fairly
 6 shortly after the search took place, and the
 7 search -- my recollection is there was an article in
 8 the newspaper, but I'm not sure about that, but the
 9 bottom line is that Child Protective Services became
 10 aware that there had been that amount of controlled
 11 substances found in and around the home of Gerry and
 12 Michele, and they wanted to interview the family to
 13 determine whether or not the children were at risk.

14 Q. And were you representing him in that
 15 process?

16 A. Yes, sir.

17 Q. Do you know whether they interviewed the
 18 family?

19 A. Did they?

20 Q. Child Protective people.

21 A. They did. In my presence, two folks came
 22 out from Child Protective and interviewed Gerry and
 23 Michele in their home sometime in mid-October or so.

1 No other questions at this time.

2 THE COURT: In view of the voir dire,
3 does the State have any questions on this issue to
4 ask this witness?

5 MR. WHARTON: NO.

6 THE COURT: In that case, we can bring
7 the jury in.

8 (The jury returned to the courtroom)

9 THE COURT: Members of the jury, again
10 let me offer my apologies. We have been in session
11 and have been addressing issues that needed to be
12 dealt with outside of the jury's hearing.

13 My apologies for not being able to
14 explain those matters, but those are questions of the
15 law that needed to be resolved.

16 Mr. Wharton, you may continue.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. WHARTON:

19 Q. When we left before the luncheon recess,
20 you told us that initially Gerry told you that maybe,
21 possibly the defendant could have said something like
22 he needed to borrow a boat if he killed someone or
23 something like that. Is that a reasonably accurate

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1 paraphrase?

2 A. Yes. The only thing more accurate would
3 be if I read it directly from my memo. But it's
4 something like that.

5 Q. And you also testified that you did not
6 press him at that time.

7 A. I did not press him.

8 Q. But at a later occasion you talked to him
9 about that comment.

10 A. A short time later; not the same day.

11 Q. Within a couple of days?

12 A. Probably.

13 Q. And at that time there were no
14 conditions, if you will.

15 A. I said something first, and I then asked
16 him again where are we on this issue, and the
17 response was without condition.

18 Q. Without condition. Were there any
19 maybe's?

20 A. Any what?

21 Q. Maybe's.

22 A. No.

23 Q. Possible's?

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2 Q. Were there any could have's?

3 A. No.

4 Q. Was there any "something like it"?

5 A. No.

6 Q. Was it in any way equivocal?

7 A. No.

8 Q. When was it that you and Gerry decided
9 that you were going to come in and talk to the
10 authorities?

11 A. Pretty much by the end of late October.

12 Q. When did you actually do that?

13 A. Gerry and I came in on a Saturday which I
14 think was the 8th of November.

15 Q. Now, had you had a --

16 A. If I can finish though, two days prior to
17 that on the 6th --

18 Q. That's what I was going to ask you.

19 A. I myself had spoken with Mr. Connolly
20 face to face but without Gerry. I think it was two
21 days before that.

22 Q. That's what I was going to ask you,
23 whether you had had a meeting with Mr. Connolly or

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1 anybody else prior to Gerry and you coming in.

2 A. Yes, I think it was Thursday the 6th.

3 Q. Did you and he discuss the terms of a
4 plea agreement --

5 A. We did.

6 Q. -- that Gerry was prepared to enter into.

7 A. Yes.

8 Q. Or was contemplating entering into.

9 A. Yes.

10 Q. Let me show you State's Exhibit 101 and
11 ask you to take a look at that.

12 A. Yes.

13 Q. Is that the agreement that you and the
14 client and the federal government ultimately entered
15 into?

16 A. Yes, it is.

17 Q. When did you enter into that agreement?

18 A. On the 8th.

19 Q. When you brought your client in with you?

20 A. That's when we signed off on it, on the
21 8th.

22 Q. Now, what does paragraph two require him
23 to do?

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1 information given pursuant to the agreement, meaning
 2 the first set of statements, may be used to
 3 cross-examine him and may be introduced as rebuttal
 4 evidence.

5 Q. How about paragraph nine?

6 A. This is a stipulation that Gerry
 7 understood that if he made materially false
 8 statements to the government or testified falsely at
 9 trial or any other legal proceeding, including grand
 10 jury proceedings, he would be subject to perjury and
 11 obstruction of justice charges.

12 Q. Who is it that determines whether or not
 13 his obligations to testify truthfully are met?

14 A. If there was a dispute about whether or
 15 not Gerry had testified truthfully –

16 Q. For example, if there was an allegation
 17 that he did not testify truthfully at trial or at any
 18 other hearings including up to trial.

19 A. If the government were to make that
 20 allegation, and in effect, to say to me, "Your deal
 21 is off because Gerry didn't do what he promised to
 22 do," unless Gerry were to say to me, "That's true, I
 23 didn't testify truthfully," if Gerry were to say,

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1 If he did all of that, the government
 2 agreed that a sentence of three years probation was
 3 the appropriate disposition of his case, meaning if
 4 he pled guilty when he pled guilty to the misprision
 5 offense, the government would recommend three years
 6 probation.

7 Q. What else is in that paragraph?

8 A. Say again?

9 Q. Is there anything else in that paragraph?

10 A. I don't think so. I think I read the
 11 whole thing.

12 Q. Paragraph labeled "eighth", what does
 13 that agreement require?

14 A. Paragraph eight on the second page, in
 15 the event -- this is directed to me. In the event --
 16 right?

17 Q. Right.

18 A. If my client Gerry offers testimony
 19 materially different from any statements made or
 20 information provided to the government by him, in
 21 other words, if Gerry were to tell the government
 22 A-B-C on one day and later say no, A-B-C isn't true,
 23 it's D, E and F, the statements, testimony and

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1 "No, I did," so there was a dispute there, that
 2 dispute would be decided by a judge, either a federal
 3 or -- probably a federal judge, but by a judge.

4 Q. Does that determination of whether he
 5 testified truthfully ultimately rest with Mr.
 6 Connolly?

7 A. No.

8 Q. When you entered into that agreement and
 9 he signed that agreement to plead guilty to the
 10 misprision of a felony charge, was Gerry then
 11 de-briefed by investigators?

12 A. Yes, he was.

13 Q. Was that a lengthy process?

14 A. It started at about 10:00 in the morning
 15 and went until about 3:30 or four in the afternoon
 16 with a short break for lunch.

17 Q. Were you present for that?

18 A. Yes, I was.

19 Q. At the conclusion of that, in other
 20 words, after that multiple hour de-briefing, was
 21 there a taped statement made?

22 A. Yes, it was.

23 Q. Let me show you State's Exhibit 78. Do

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1 A. I believe it was February 20th.
 2 Q. Were you present at that meeting?
 3 A. No, I was not.
 4 Q. Did you ultimately meet with
 5 Mr. Connolly, myself and some other investigators?
 6 A. Yes, I did.
 7 Q. When was that?
 8 A. Friday, February 27th.
 9 Q. Was Mr. Bergstrom present?
 10 A. Yes, he was.
 11 Q. During that meeting and prior to — at
 12 the beginning of that meeting I guess, did you reach
 13 any agreement with the government about whether or
 14 not you were going to face any criminal charges as a
 15 result of what you said was your lie under oath on
 16 January 28th in the interview and your false
 17 statements when you purchased the gun?
 18 A. Yes, I did.
 19 Q. Was that a written document?
 20 A. Yes, it was.
 21 Q. Did you sign that document?
 22 A. Yes, I did.
 23 MR. WHARTON: I would offer this as the

1 next State's Exhibit, Your Honor.
 2 MR. MAURER: Without objection, Your
 3 Honor.
 4 THE COURT: Without objection, it will be
 5 admitted as State's Exhibit 148.
 6 THE CLERK: So marked.
 7 THE COURT: Thank you.
 8 (AGREEMENT, State's Ex. 148 in Evid.
 9 received and marked)
 10 BY MR. WHARTON:
 11 Q. Miss MacIntyre, let me show you State's
 12 Exhibit 148 and ask you to take a look at that. Is
 13 that the agreement you entered into with law
 14 enforcement?
 15 A. Yes, it is.
 16 Q. It's dated when?
 17 A. February 27th, 1998.
 18 Q. By whom is it signed?
 19 A. It's signed by Colm Connolly, Ferris
 20 Wharton, Thomas Bergstrom and me.
 21 Q. Now, as a result of that agreement, are
 22 you going to be prosecuted for any crime —
 23 A. No, I am not.

1 Q. — that you had committed prior to the
 2 date of the agreement.
 3 A. That is correct.
 4 Q. Specifically, are you going to be
 5 prosecuted for any lies that you told to the federal
 6 grand jury when you testified before that grand jury
 7 in September of 1996?
 8 A. Correct.
 9 Q. Are you going to be prosecuted for any
 10 lies in that testimony?
 11 A. No, I am not.
 12 Q. Are you going to be prosecuted for any
 13 lies or false statements you made under oath in the
 14 January 28th, 1998 interview?
 15 A. No, I am not.
 16 Q. Are you going to be prosecuted for any
 17 false statements you made under oath in conjunction
 18 with your gun purchase?
 19 A. No, I am not.
 20 Q. As a condition I guess of this — let me
 21 put it this way. Could you read the first paragraph
 22 of the agreement or at least the one labeled "first"?
 23 A. The paragraph that begins with "first"?

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1 Q. Yes.
 2 A. "First, your client represents that she
 3 did not kill or conspire to kill or aid or abet the
 4 killing of Anne Marie Fahey. If that representation
 5 proves to be false, the government would not be bound
 6 by the terms of this agreement."
 7 Q. Are those representations true that you
 8 made?
 9 A. Yes, they are.
 10 Q. And if they were not true, could you be
 11 prosecuted for anything and everything that you've
 12 done?
 13 A. Yes, I could.
 14 Q. Did you also agree to cooperate with the
 15 federal and state authorities in the investigation of
 16 Anne Marie Fahey's death?
 17 A. Yes, I did.
 18 Q. If you could read paragraph fifth?
 19 A. "Fifth, your client understands that any
 20 statement she makes pursuant to this agreement
 21 are —"
 22 Q. This letter is addressed to your
 23 attorney, Mr. Bergstrom, right?

1 employed?

2 A. Most recently I worked at the Tatnall
3 School.

4 Q. How long did you work at Tatnall School?

5 A. About twelve and a half years.

6 Q. When did that employment end?

7 A. In February of this year.

8 Q. What did you do at the Tatnall School?

9 A. I was an administrator. I ran the before
10 and after-school program. It was called the extended
11 day program, and I also ran the summer program for
12 about five years of that period.

13 Q. Do you know the defendant, Thomas Capano?

14 A. I do.

15 Q. How long have you known him?

16 A. Since about 1977.

17 Q. How did you meet him?

18 A. I believe I met him at a law firm
19 function.

20 Q. Were you married then?

21 A. Yes, I was.

22 Q. To whom were you married?

23 A. David H. Williams.

1 Q. Did that relationship continue for a
2 period of time?

3 A. Yes, it did.

4 Q. Would it be fair to say that it continued
5 up through 1996 and 1997?

6 A. Yes, 1997.

7 Q. When you would get together while you
8 were married, where would you get together?

9 A. In a motel usually.

10 Q. Was there any particular motel?

11 A. There was a motel on Route 9 near the
12 Delaware Memorial Bridge. I believe it's called
13 Motel 6.

14 Q. Was there any particular time or routine
15 day when you would get together at Motel 6?

16 A. At that time I'm not sure what day it
17 was, but it was usually the same evening every time.

18 Q. Did it evolve into a particular day of
19 the week?

20 A. Yes. I don't remember what day it would
21 have been; maybe a Wednesday or a Thursday.

22 Q. What were your -- how long -- as this
23 relationship continued, were there any break-up's in

1 Q. When you say law firm function, what law
2 firm are you referring to?

3 A. Morris, James, Hitchens and Williams.

4 Q. Was your husband employed by that law
5 firm?

6 A. Yes, he was.

7 Q. He was not the Williams at the end of
8 that?

9 A. No; that was his father.

10 Q. Was the defendant employed by that law
11 firm?

12 A. Yes.

13 Q. At some point did you begin a relation-
14 ship with the defendant?

15 A. I did.

16 Q. Was that a sexual relationship?

17 A. Yes, it was.

18 Q. When did that sexual relationship begin?

19 A. In May of 1981.

20 Q. Were you married at the time?

21 A. I was.

22 Q. Was he married at the time?

23 A. He was.

1 the relationship?

2 A. Yes.

3 Q. How many?

4 A. One in particular I recall. I cannot
5 recall the year. It would have been in the fall,
6 maybe October. October.

7 Q. How long did that last?

8 A. About five weeks.

9 Q. Who wanted to end it when it ended?

10 A. Tom Capano did.

11 Q. Who wanted to get back together when it
12 got back together?

13 A. I did.

14 Q. Did you and he talk during this time
15 period, talking about pre-1995, did you and Tom
16 Capano talk about the future of your relationship?

17 A. Not really, no.

18 Q. Did he ever talk to you about whether or
19 not he would leave his wife?

20 A. No.

21 Q. Did he have children?

22 A. Yes.

23 Q. Was your relationship public?

1 there's him to contend with? Afraid, you said of
 2 what? Pointless, groundless, hollow noises from
 3 Connolly? I've told you a hundred times you have
 4 nothing to worry about.

5 "Do I now have to worry about you? I can
 6 feel myself getting angry and again feeling the sense
 7 of betrayal I felt when you abandoned me at the bail
 8 hearing. Do you love me or not? Do you know what
 9 love is, Debby?"

10 Q. Skip down to a third of the way from the
 11 bottom.

12 A. "You must now prove your love to me.
 13 Everything you've done for nearly a month sends the
 14 message you don't love me and perhaps never did. I
 15 cannot survive with that uncertainty. Ambivalence
 16 would be worse than knowing you no longer love me.

17 "There is only one way now for you to
 18 prove your love clearly, completely and
 19 unequivocally, and also to demonstrate that your act
 20 abandoning me when I most needed you was not
 21 something you will ever do again.

22 "This is my ultimatum and this is your
 23 choice. Me or your lawyer. You cannot straddle the

1 strangers.

2 "I'm imprisoned and will soon be on trial
 3 for my life. You have been the victim of rumor and
 4 negative press and have no legal concerns and a zero
 5 chance of any future legal problems.

6 "What I just said is true regardless of
 7 any empty noises Connolly may spread to the press or
 8 your new lawyer. Debby, you know Connolly is a liar
 9 and cannot be trusted or believed.

10 "So I will sacrifice the services of
 11 friends who have been my attorneys for eighteen
 12 months, Charlie, thirteen months, Joe four months,
 13 Gene, to -- eighteen months Charlie, thirteen months
 14 Joe, four months Gene, to demonstrate my devotion and
 15 relieve you of any concerns you may have about them,
 16 although you have never expressed any.

17 "And Debby, they have never asked me to
 18 give them letters I received from you. We talked
 19 about you Wednesday night as I told you, and for the
 20 second week in a row about your legal situation, at
 21 my insistence. After those three experienced
 22 Delaware lawyers who are my friends assured me for
 23 the second --"

1 fence. You must choose between us. If you choose
 2 him, please return all my letters for the sake of
 3 whatever you once thought of me and write me to
 4 explain why you chose him.

5 "I don't really care if you like him.
 6 There are other lawyers who will not try to drive a
 7 wedge between us. If you choose me, I will gain the
 8 strength to survive and endure. I will know your
 9 betrayal was an isolated act. I will protect and
 10 stand by you forever.

11 "This does not seem to be any big deal.
 12 In fact, it should be a no brainer. Lawyers are a
 13 dime a dozen. True love is rare. I need you now.
 14 He doesn't. And you don't need him. Plus it will
 15 take Dave Williams out of the equation which has
 16 caused me more pain than you know. To prove that
 17 this is no monetary flash of a broken heart --"

18 Q. I think that has "momentary".

19 A. "To prove take this is no momentary flash
 20 of a broken heart, I make the same offer to prove my
 21 love for you. I will fire Charlie, Joe and Gene to
 22 prove you mean more to me than any stranger. In
 23 fact, in my case, they are all friends, not

1 Q. Let me stop you there. Tom Bergstrom,
 2 your new lawyer at that time, where did he have his
 3 office?

4 A. In Malvern, Pennsylvania.

5 Q. So after he said "those three experienced
 6 Delaware lawyers," would you continue reading please?

7 A. "After those three experienced Delaware
 8 lawyers who are my friends assured me for the second
 9 week in a row that you were in no danger with a teeny
 10 tiny possibility that Connolly would threaten you
 11 with perjury because of the date we first had sex,
 12 after all that, Gene looked at me and said 'you
 13 really do love her, don't you,' and I told him I
 14 loved you with all my heart despite everything and
 15 that I would never let anything happen to you, even
 16 if I had to swear under oath that we never had sex
 17 until whatever date you needed me to say.

18 "I will give them all up. I will

19 sacrifice the huge amount of money I've already
 20 spent. I ask only that you give up someone who is a
 21 stranger, not a friend, someone you've known for only
 22 a few weeks and met only a few times, someone who
 23 cannot have cost you much yet, someone somehow

1 connected to Dave Williams, someone who wants you to
 2 refuse my calls and turn over my letters so he can do
 3 whatever he wants with them, someone who doesn't care
 4 and probably didn't ask if you loved me, someone who
 5 doesn't care about me as my present lawyers care
 6 about you.

7 "I'm willing to give up a hundred dollar
 8 bill and ask only that you give up a penny. There is
 9 no reason for you to decline if you care about me
 10 since this guy obviously wants to cause me harm. My
 11 lawyers mean you no harm and have even done things to
 12 help you.

13 "And as a practical matter, if the one in
 14 a million possibility happens and Connolly tries to
 15 charge you with lying to the grand jury because of
 16 your characterization of our relationship, a judge
 17 would dismiss the charge even before a jury threw it
 18 out.

19 "Your new lawyer could not even represent
 20 you because he's not a Delaware lawyer. The only way
 21 he could be involved is if you hire a Delaware lawyer
 22 to work with him and thus pay for two lawyers. We
 23 will both find new Delaware lawyers. You should not

1 I doubt I ever will because I will then know that you
 2 have lied to me all these years and never truly loved
 3 me. Dave Williams?"

4 Q. Tab 16. This is dated when?

5 A. Thursday, February 26th.

6 Q. This is the third letter of that date?

7 A. Correct.

8 Q. When did you go in to see the government?

9 A. Friday, February 27th.

10 Q. Turn to page two and read the highlighted
 11 portions which begins at the second paragraph.

12 A. "Since you know better than anyone the
 13 fragile condition of the man you love, I have to hope
 14 the choice I asked you to make to give me heart and
 15 reassurance was an easy one for you.

16 "I hope you understand why it had to
 17 happen now and how utterly crucial it was to me and
 18 to us. It may help me avoid a nervous breakdown. It
 19 may be the tie that truly binds us together.

20 "As I said, I asked you to sacrifice a
 21 penny compared to my sacrifice of a hundred dollar
 22 bill. I know it didn't mean much to you or cost you
 23 any emotional capital, but it means a great deal to

1 even have to think about this for all the reasons
 2 I've listed.

3 "And more important than the reasons is
 4 the simple fact that the man you profess to love has
 5 asked you to do it because he needs reassurance. I
 6 can't believe you will decline to do it, but if you
 7 do, I'll know for certain you do not love me.

8 "What will haunt me, of course, is the
 9 question of whether you ever did. This relationship
 10 has not cost you anything. It demanded something of
 11 you."

12 Q. I'm sorry?

13 A. "This relationship has never cost you
 14 anything."

15 Q. I think that says "the first time".

16 A. "The first time it demanded something of
 17 you, you were not willing to pay the price. Now it's
 18 demanding something again, and this time with damn
 19 good reason, which is of insignificant cost to you.

20 "I've offered to pay a great cost in
 21 exchange although you have absolutely no reason to
 22 need reassurance. Do you love me? If you don't,
 23 then I need to know so I may try to recover, although

1 me and inspires me to fight for us and our future.

2 "Because I am so confident that you chose
 3 me, my sanity and my health, my heart, my love, that
 4 I'm going to thank you now for your devotion and
 5 unconditional love. I thank you for trusting me
 6 again and making your love tangible. We will win
 7 this, Deb. We will have a future."

8 Q. If you could turn to the last page of
 9 that letter, the PPPS.

10 A. "Remind me to tell you about my friend
 11 Nick Perillo, the guy who has tried to call you for
 12 me a few times and may again depending on what
 13 punishment I receive.

14 "He has the paper that got confiscated
 15 when he slid it back under my door around 9:00 last
 16 night when he tried to call but got the machine. Do
 17 you get those messages?"

18 MR. WHARTON: Your Honor, I notice the
 19 time, Your Honor.

20 THE COURT: We'll take our morning recess
 21 at this time and I'll ask the bailiff to remove the
 22 jury. I'll ask the people in the audience to remain
 23 seated.

(The jury left the courtroom)

THE COURT: Court will stand in recess.

(At this time a short recess was taken).

MR. WHARTON: Your Honor, I think counsel would like to speak with the court at side bar.

THE COURT: All right. On the record?

MR. WHARTON: Yes.

(Side bar conference):

MR. WHARTON: Your Honor will recall this morning Mr. Maurer suggested there might be an issue to discuss at side bar prior to the cross-examination, and winding down the direct, I expect we will start the cross-examination before lunchtime. So this is an appropriate time now I guess to bring that up.

MR. MAURER: I had a conversation actually with Mr. Wharton and Mr. Connolly about this, and during the course of my examination of Miss MacIntyre, I intend to ask her specifically whether when she went to Grant Avenue in June, the 27th, 28th of '96, whether she had a firearm with her when she went over there and whether she discharged the firearm.

I had wanted to bring that up initially.

I anticipated at that time the State might object to that line of questioning and argue that if the defendant doesn't testify I don't have a good faith basis for asking that question.

We flushed that out. I don't think that there is an objection to my asking the question and an additional basis which thought I had the basis to ask the question about was the immunity agreement where she makes specific representations that she did not kill, conspire to kill or assist in the killing.

MR. CONNOLLY: Judge, just to further flush it out somewhat, as Mr. Maurer just alluded to, we just want it clear that in order for Mr. Maurer to have a good faith basis to ask this question, his client must have provided some kind of account such that if the client were to take the stand at some point and testify differently it would raise ethical concerns.

We're very comfortable with Mr. Maurer's ethics, so I just wanted to put it on record to protect ours, not because of anything we think about Mr. Maurer.

1 MR. MAURER: Thank you, Mr. Connolly.
2 I'm pretty comfortable with my ethics for the most part at this point.

4 MR. CONNOLLY: I think it's fair for us
5 to put it there.

6 MR. MAURER: I didn't mean to be
7 pejorative when I said that.

8 MR. WHARTON: There are a couple of other
9 issues that may get broached during cross-
10 examination. She has testified or actually she has
11 read some letters in which she makes and breaches
12 some what would otherwise be confidential
13 communications with her lawyer Adam Balick, and
14 perhaps that could be viewed as a waiver of
15 confidential communications to go beyond what is in
16 the letters.

17 I don't know what Mr. Maurer intends to
18 do. I don't think he intends to go into that, but I
19 do think that if that's the case, that reciprocity
20 ought to follow inasmuch as the defendant has made
21 also breaches of confidentiality in his
22 correspondence to Debby so that if we stray beyond
23 what is in the letters with respect to Adam Balick

1 and Debby MacIntyre, we should be given license to
2 stray beyond communications between the defendant and
3 his lawyers beyond what appear in the letters.

4 MR. MAURER: I understand the State's
5 position on that and obviously Tom's breached our
6 attorney-client privilege considerably already with
7 the letters that are in. It's not really my intent
8 to cross-examine in that area.

9 THE COURT: That's a substantial issue,
10 and I don't want to make a superficial ruling here
11 because I think there are a lot of problems as to
12 whether you can make a partial disclosure and whether
13 that can be compartmentalized or not, and I'd prefer
14 not to make a decision in that area, but it seems to
15 me at this particular stage -- clearly I hate to fall
16 back on trite sayings, but what's sauce for the goose
17 is sauce for the gander, we know that.

18 MR. WHARTON: It's getting close to
19 Thanksgiving so that may be an appropriate reference.

20 The other issue involves communications
21 she had with Joe Hurley. As the Court is aware, he
22 was the lawyer for Mr. Capano. If we get into -- I
23 understand Mr. Maurer may ask about those

1 communications.

2 That raises a similar sort of related
 3 issue in terms of if Mr. Hurley testifies as a
 4 defense witness, the scope of cross-examination
 5 there. We're not looking for a resolution of that
 6 right now but simply to say that this is out there,
 7 and I wanted to put our concerns on the record about
 8 whether they lead to the waiver of certain work
 9 product information.

10 THE COURT: I thought you were going to
 11 tell me that Miss MacIntyre was a part of the Capano
 12 team and therefore all those communications were
 13 privileged.

14 MR. MAURER: If I can just add to that,
 15 Joe Hurley interviewed her when he became involved in
 16 the case, and he took a statement from her and we
 17 have a memorandum of what she told him and that's in
 18 some respects inconsistent with what she's testified
 19 to here today, and that's the purpose that I want to
 20 ask her those questions. We plan to call Joe Hurley
 21 as a witness.

22 MR. CONNOLLY: There's another point
 23 which I just thought of. We would take the position

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 1 not only that we get Joe Hurley's interviews of her
 2 but Charlie interviewed her too, and we would want
 3 Charlie's notes and any notes.

4 It's attorney work product relating to
 5 interviews of her, and once you waive it with Joe
 6 Hurley, you waive it for everybody.

7 MR. OTERI: That's an expansive
 8 interpretation.

9 MR. MAURER: We don't agree with that.
 10 There was also an interview that Charlie had with her
 11 on August 16th of 1996 when Mr. Vaulles was present,
 12 an investigator who will also be called to testify.
 13 I don't think we have any problem in turning those
 14 notes over.

15 MR. OBERLY: In fact, Your Honor, I was
 16 the stenographer. I did not conduct the interview.
 17 I wrote the notes. Somebody else did.

18 THE COURT: I'm proud that you have that
 19 talent.

20 MR. CONNOLLY: You interviewed her first
 21 week of July as well.

22 MR. OBERLY: On the telephone.

23 MR. CONNOLLY: If you have notes for

1 that.

2 MR. MAURER: I'm not going to question
 3 her about that interview.

4 MR. WHARTON: I'm just saying that that
 5 topic raises some work product waiver issues and
 6 cross-examination issues if Mr. Hurley testifies.

7 MR. MAURER: We'll see what we are.

8 THE COURT: They have a lot of issues out
 9 there.

10 MR. MAURER: I can't not cross-examine
 11 her.

12 (Side bar conference ended)

13 THE COURT: Please bring the jury in.

14 (The jury returned to the courtroom)

15 THE COURT: Mr. Wharton.

16 MR. WHARTON: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. WHARTON:

19 Q. Miss MacIntyre, the defendant wrote you
 20 three letters dated Thursday, February 26th of 1998,
 21 the day before you went in to speak to the
 22 government. You also wrote him a letter on February
 23 26th of 1998, did you not?

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1 A. Yes, I did.

2 Q. Would you turn to tab forty please. The
 3 first paragraph that's highlighted, could you read
 4 that?

5 A. "About me not testifying, yes, it made me
 6 look bad and the media took shots at me. What else
 7 is new? Yes, my self is damaged, and I may (no did)
 8 have lost my job as a result of the publicity.

9 "But I must be open with you. I never
 10 could lie, never can lie well about anything and
 11 that's been so evident in our relationship. Any
 12 little thing you picked up, and that's okay because I
 13 think it's a good thing to be honest.

14 "I know you wanted to tell me what to
 15 say, but no amount of practice could make it seem
 16 real. I knew it when it came out, I didn't blow it,
 17 I just didn't lie well".

18 Q. What were you talking about?

19 A. I was talking about the story about the
 20 gun.

21 Q. Was that in the January 28th interview?

22 A. Correct.

23 Q. Would you turn to the next page please.

1 About the middle of the page there's a highlighted
 2 paragraph.
 3 A. "Tomorrow will be a big day for me. I
 4 know you called me tonight while I was out. I got
 5 home at 10:30 p.m. and your last attempt was 10:24
 6 p.m."

7 Q. "Tomorrow will be a big day for me," what
 8 are you referring to?

9 A. The meeting that I had with you on
 10 Friday, February 27th.

11 Q. Go ahead.

12 A. "I know you called me -- I am wondering
 13 if you knew of the media news then. If I had talked
 14 with you, I would have told you I was going to be
 15 truthful, that is the only way. I don't know what
 16 the truth will do. Will it hurt you? I don't know
 17 what the defense case is nor do I know what the
 18 prosecution case is.

19 "Today I received a letter from you that
 20 was written from the heart and it made me cry for
 21 both of us who can't hold onto each other. You think
 22 I have betrayed you. I have not. I have told the
 23 truth and we must both live with the truth.

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1 "I know completely for sure without a
 2 doubt you love me. I never doubted your love. Some
 3 letters were horrible and I could not read them. But
 4 some of it was true. I had been walked over most of
 5 my life and by you for sure. I guess I let the man
 6 of my life walk over me more than anyone else.

7 "You can build me up and point out my
 8 strengths better than anyone. When down, I have been
 9 encouraged by you, but you can trash me like no other
 10 as well. I'd like to think that I know you better
 11 than anyone, but maybe I don't. Yes, we are one,
 12 soul mates. For me there is no way that can be taken
 13 away regardless."

14 "Often I wonder why all this tragedy had
 15 to happen. What happened and why are you involved?
 16 Will you ever be able to tell me? I think not, and
 17 that will always keep us apart. Tom, I hope you are
 18 still reading this."

19 Q. On Friday, February 27th, you testified
 20 you came in and spoke to Mr. Connolly and me and
 21 other investigators, correct?

22 A. Correct.

23 Q. Did you tell us about the gun?

1 A. Yes, I did.

2 Q. What did you tell us about the gun?

3 Whose idea was it to get the gun?
 4 A. It was Tom Capano's idea to get the gun,
 5 for me to purchase the gun.

6 Q. Is that what you told us on February
 7 27th?

8 A. Yes.

9 Q. And what you testified on direct
 10 examination earlier about the gun, and what you did
 11 with it, is that essentially the story you told us on
 12 February 27th?

13 A. That is correct.

14 Q. The next day and into a couple of days
 15 later, you continued that letter, did you not?

16 A. Yes, I did.

17 Q. There is a portion after you concluded
 18 the February 26th segment of it dated Saturday,
 19 February 28th to Monday, March 2nd, 1998.

20 Would you look at the last page there
 21 please and there is a highlighted portion. Would you
 22 read that?

23 A. "It has been good to hear your voice

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1 again. Truthfully, I never expected to hear from you
 2 again and am curious but pleased that you have called
 3 me. I have also been advised to not write to you, but
 4 I have been wanting to do so for a long time.

5 "Our conversation of last night bothered
 6 me and I know we got cut off in the end. I spent
 7 most of the night thinking about it. I am serious in
 8 writing that I really don't understand why you would
 9 change your lawyers to prove your love for me.

10 "Tom, that does not make sense to me, but
 11 worries me as I think you believe that's how you show
 12 your love. That shouldn't be. For me, changing
 13 lawyers is not proving to you that I love you. I
 14 have endured too much emotional torture in the past
 15 eighteen months and know I could not mentally or
 16 physically make another change without compromising
 17 my health.

18 "I am tapped out and can take little
 19 more. Besides, I like him and believe in him. As
 20 you don't know him, you cannot see that. But if you
 21 love me, you will support me for the choices I have
 22 made.

23 "You have said or written that you are a

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1 drowning man and I can really identify with that. I
 2 feel like I am drowning too, but not with you. I
 3 want so much to preserve in my mind and heart what we
 4 have had together.

5 "What has been difficult for me is that
 6 few have been able to understand that despite all
 7 that has surpassed that I still love you. My
 8 therapist asked me today why I feel that way, and I
 9 told him that you have always been there for me in
 10 times of trouble.

11 "You respect me and my openness and
 12 honesty. You are my best friend. You listen well
 13 and you love me completely. If all of this is true,
 14 then you must understand deep in your heart why I
 15 have been so truthful and honest. That is me.

16 "It doesn't mean I don't love you. It
 17 hurts more than anything to read some of your words
 18 that are written right along with your words of love.
 19 I am more than a little confused but know you are way
 20 beyond that.

21 "There is nothing I can say or write to
 22 you that will convince you that I love you now and
 23 forever. If you do love me as you say you do, you

1 for identification, thank you.
 2 (PHOTOGRAPH, State's Ex. 149 in Evid.
 3 received and marked).
 4 (DOCUMENT, State's Ex. G for I.D.
 5 received and marked)

6 BY MR. WHARTON:

7 Q. Miss MacIntyre, let me show you State's
 8 Exhibit 149 and ask you do you recognize what is
 9 depicted in that photograph?

10 A. Yes, I do.

11 Q. What is depicted in that photograph?

12 A. That is my house.

13 Q. Let me show you what's been marked as
 14 State's for identification G and ask you to take a
 15 look at that. First of all, do you recognize on the
 16 front page of that the printing?

17 A. Yes, I do.

18 Q. Whose printing do you recognize it to be?

19 A. Tom Capano's.

20 Q. Would you turn the page please? Do you
 21 recognize what's depicted on the second page?

22 A. Yes, I do.

23 Q. What do you recognize that to be?

1 must trust and believe my words. I have nothing to
 2 gain or lose by writing about my feelings for you now
 3 as I believe I have lost you too.

4 "I want to believe more than anything
 5 that we will both go to our eventual destinies in the
 6 future knowing that both of us have been loved and
 7 have loved completely."

8 Q. Miss MacIntyre, you told us that you
 9 lived on Delaware Avenue. What is the address there?

10 A. 2425 Delaware Avenue.

11 MR. WHARTON: Your Honor, I want to offer
 12 this as next State's exhibit and have this next item
 13 marked for identification.

14 MR. MAURER: No objection to either
 15 document.

16 THE COURT: Thank you, Mr. Maurer. It
 17 will be admitted without objection as State's Exhibit
 18 149.

19 THE CLERK: So marked.

20 MR. WHARTON: The other item is to be
 21 marked for identification.

22 THE CLERK: State's identification G.

23 THE COURT: Whatever you say. State's G

1 A. It's a map to my house.

2 Q. From where to where? Coming from what
 3 direction?

4 A. Coming from town to out of town towards
 5 Rockford Park.

6 Q. Does that depict the various streets to
 7 where your house?

8 A. Yes.

9 Q. Turn to page — is it accurate?

10 A. It is very accurate.

11 Q. Can you turn to the next page please? Do
 12 you recognize what's depicted on that page?

13 A. Yes, I do.

14 Q. What do you recognize that page to be?

15 A. A floor plan of the first floor of my
 16 home, and a diagram of my alarm box.

17 Q. Is it an accurate diagram of the floor
 18 plan of the first floor of your home?

19 A. That is correct.

20 Q. Does it detail — there are certain
 21 details on that.

22 MR. MAURER: Your Honor, I understand
 23 this is for purposes of identification at this point

1 after that, whether it was early summer, spring, late
 2 summer, whenever?

3 A That is correct.

4 Q But whenever you did it - and I'll show
 5 you both of those documents and I guess,

6 MR. MAURER: Is there any objection to
 7 them? Admissibility? Okay.

8 BY MR. MAURER:

9 Q If I could show you both those documents
 10 and ask you if in fact if they are the documents you
 11 prepared? And take a minute to look at them.

12 A Yes, they are.

13 Q Are they?

14 A Yes.

15 Q Thank you.

16 MR. MAURER: Your Honor, I would like to
 17 move both those documents into evidence as --

18 THE CLERK: 1 and 2.

19 THE COURT: Defendant's Exhibits 1 and 2;
 20 is there objection?

21 MR. WHARTON: No, Your Honor.

22 THE COURT: Without objections defendant's
 23 Exhibits 1 and 2 may be admitted.

1 THE CLERK: So marked.

2 THE COURT: Thank you.

3 MR. MAURER: Thank you, Your Honor.

4 (WHEREUPON, documents are received and
 5 marked Defendant's Exhibits 1 and 2 in evidence)

6 MR. MAURER: Thank you, Your Honor. I
 7 apologize; something we needed to discuss.

8 BY MR. MAURER:

9 Q When is the first time you spoke with
 10 the authorities after, according to your testimony,
 11 now, as to the purchase of the firearm at Miller's?

12 A My attorney or --

13 Q You?

14 A When I spoke with anybody?

15 Q I'm sorry. To the government.

16 A February 27th, 1998.

17 Q And when you spoke to the individuals for
 18 the government as opposed to your attorney, - and
 19 what I'll try to do, if I ask you a question about
 20 your attorney I'll refer to him specifically. Okay?
 21 But when you spoke to the government February 27th,
 22 that was the first time you did that. Is that
 23 correct?

1 A That's correct.

2 Q And when you talked to them, in
 3 particular, the person who is a witness in the case,
 4 and not going to be a witness, was Det. Donovan, is
 5 that right? He was there?

6 A Yes, he was.

7 Q He was there?

8 A Yes, he was.

9 Q And other individuals were there as well?

10 A Yes.

11 Q But I'm focusing primarily on Det.

12 Donovan. Did you tell Det. Donovan everything that
 13 had occurred with regard to the purchase of this
 14 firearm?

15 A Perhaps some specifics had evolved later
 16 and I could add them later, but I cannot tell you
 17 exactly that I did at that time.

18 Q Okay. For example, Mrs. MacIntyre, did
 19 you reveal to Det. Donovan at that time that you had
 20 gone to the Sports Authority on a prior occasion to
 21 purchase a firearm?

22 A I don't recall.

23 Q By you don't recall, if you are going to

1 that meeting I could tell you for sure whether I said
 2 anything or not. I don't really remember, Mr.
 3 Maurer.

4 MR. MAURER: Your Honor, I don't know if
 5 the state will have any objection to this, if I could
 6 just take a moment?

7 THE COURT: You may.

8 (WHEREUPON, there is a discussion off the
 9 record)

10 BY MR. MAURER:

11 Q Mrs. MacIntyre, what I'm going to do at
 12 this point, with consent, is show you a police report
 13 dated February 27 of 1998, prepared by Det. Donovan.

14 First of all, with the understanding you
 15 probably have not seen this before, right?

16 A That is correct.

17 Q And this police report purports to discuss
 18 what you discussed with him on that date. Okay? So,
 19 if you would like to take a moment and look through
 20 there, first, and then I'll have some questions to
 21 ask of you.

22 A (Witness complies)

23 Q Have you had an opportunity to read

1 A I remember signing them in the store, and
 2 yes, looking at the one form very clearly when I got
 3 out of the store.

4 Q But the point of the matter is that when
 5 you were talking to Det. Donovan on February 27th
 6 about the gun purchase, and the signing of the forms,
 7 you knew before you ever went to Miller's, that it
 8 was illegal to purchase a gun for someone else,
 9 didn't you?

10 A That is correct.

11 Q Okay. And today you're saying that.
 12 Correct?

13 A That is correct.

14 Q Now when you talked to Det. Donovan,
 15 however, on the 27th of February, you didn't mention
 16 the fact that you had been to the Sports Authority
 17 and you didn't mention the fact that the person
 18 behind the register told you at that time that it was
 19 illegal?

20 A That is correct.

21 Q Now, is the reason that you didn't mention
 22 it still that you weren't asked? Or did you have
 23 some other motive for not mentioning that when you

1 through those four pages?

2 A Yes, I have.

3 Q And would you agree, understanding these
 4 are someone else's notes prepared based on your
 5 interview, that there is no mention whatsoever in
 6 those notes of your trip to the Sports Authority?

7 A No, there is not.

8 Q Okay. So, do you think now having looked
 9 at those notes and having thought about it a little
 10 bit that you never mentioned that to Det. Donovan
 11 when you spoke him on February 27th?

12 A That's probable.

13 Q Okay. And isn't the reason that you
 14 didn't mention it at that time because, later, when
 15 you talked to Det. Donovan about the purchase of the
 16 gun, which I believe was on April 25 of 1998, you
 17 told him that you didn't even look at these forms
 18 that you signed until after you got out in the car,
 19 after the gun purchase.

20 Do you remember saying that to Det.
 21 Donovan, later?

22 A No, I do not.

23 Q You don't recall saying that to him?

1 I spoke with him on the 27th of February?

2 A No. Many things evolved in this case.
 3 Information -- I was very nervous on
 4 February 27th.

5 I answered the questions that I was asked,
 6 and I was not thinking about the Sports Authority.

7 I was thinking about Miller's Gun Shop.

8 Q Okay. So, you completely forgot about
 9 another trip that you had made to a store in order to
 10 purchase a firearm.

11 Is that what you're saying?

12 Or you didn't think about mentioning that?

13 A I was not thinking about Sports Authority.
 14 No.

15 Q And you weren't asked, so, you didn't
 16 bring it up. Is that right?

17 A That's probable.

18 Q Now, you testified, or you indicated to
 19 Det. Donovan, or did you indicate to Det. Donovan on
 20 February 27th, in your interview, that you didn't
 21 read the paperwork saying it was illegal to purchase
 22 the firearm until after lunch?

23 A I don't understand the question.

1 Q All right. Let me repeat it it.
 2 You spoke to Det. Donovan on February
 3 27th. Did you say to Det. Donovan, that you didn't
 4 read the paperwork regarding the purchase of the
 5 firearm saying that it was illegal, until after you
 6 and Tom had had lunch?

7 A I pulled the paper out of the bag and
 8 showed it to him. I thought I did, as soon as I
 9 came out of the store. I recall that. If I did it
 10 after lunch, that's possible as well. But I remember
 11 that specifically.

12 Q I'm not asking you at this point when you
 13 did it or if you didn't do it. What I'm asking you
 14 is whether you have a recollection of telling Det.
 15 Donovan that the first time that you looked at the
 16 paperwork was after lunch.

17 Do you remember telling him that?

18 A No, I do not.

19 Q How many people were in the store at the
 20 Miller's purchase?

21 A I could not tell you that.

22 Q By the way, back up for just a minute.

23 You did go to Sports Authority.

1 You do concede that now?

2 A I did go to Sports Authority.

3 Q Do you remember when you went there?

4 A I believe it was some time in April.

5 Q April of '96, is that correct?

6 A Correct.

7 Q All right. And when you went to the
 8 Sports Authority, did Tom go with you?

9 A No, he did not.

10 Q So, you went on your own?

11 A I went at his request - on my own.

12 Q Do you understand my question to you was,
 13 did you go on your own?

14 A I did.

15 Q Okay. Now, before you went to Sports
 16 Authority and you had every intention to make a
 17 purchase if that was appropriate at the time, you
 18 indicated that you went at Tom's request and he had
 19 asked you to do this. Is that right?

20 A Yes.

21 Q Now, and, did you discuss with him how
 22 this purchase was going to be made in terms of paying
 23 for it?

1 Q So, you discussed none of these things
 2 according to you before the purchase was made, with
 3 Tom?

4 A Could you say that again, please.

5 Q You discussed none of the things we just
 6 talked about, before the purchase was made, with Tom.
 7 How to pay, what to pay with, - cash, check, credit
 8 card, what type of gun, what type of bullets. None
 9 of that stuff was discussed. Is that right?

10 A We spoke about a type of gun but not
 11 specifically.

12 Q So the answer to my question then is that
 13 none of those things I just asked you were discussed
 14 beforehand?

15 A That is correct.

16 Q Actually, Mrs. MacIntyre, you were
 17 required to sign three documents when you made your
 18 purchase of May 13, of 1996. Is that right?

19 A That is correct.

20 Q Okay, and there were three separate
 21 documents submitted to you by the salesman that
 22 required your signature; is that right?

23 A Yes.

1 Q And you've seen these in direct
2 examination, correct?

3 A Yes, I have.

4 Q And, if I could first go over with you
5 number 136.

6 That is your signature, is it not?

7 A Yes, it is.

8 Q Okay. Now when you made this purchase,
9 it's you and a salesman, right?

10 A Yes.

11 Q Talking to each other. Is that right?

12 A Correct.

13 Q Okay. And the salesman is I guess asking
14 you questions and talking to you about things, and in
15 particular for whom you're purchasing the firearm,
16 right?

17 A Correct.

18 Q And he just like you and I are except he
19 is a lot closer to you than at this point, just the
20 two of you are discussing this transaction; is that
21 right?

22 A That's right.

23 Q All right. The salesman gives you the

1 form. And the first one says, "I, Deborah MacIntyre,
2 residing at 2625 Delaware Avenue, hereby affirms,
3 under the penalties of perjury" - and you understood
4 at that time what perjury was, did you not?

5 A Yes.

6 Q Just like you understand today what
7 perjury is, right?

8 A That is correct.

9 Q And that's basically lying after you take
10 an oath and promise that you won't lie, right?

11 A Yes.

12 Q You then say that you're purchasing the
13 following firearm for "my personal, recreational,
14 sporting, target and/or self-defense use; it is not
15 my intention to give this firearm to another person".

16 Is that right?

17 A That is correct.

18 Q And on May 13th of 1996 that's what you
19 swore to. Is that right?

20 A I did.

21 Q You now say that that was a lie. That you
22 weren't buying this gun for yourself but that you
23 were buying it to give to Tom Capano, right?

1 lies?

2 A I did not tell him they were lies.

3 Q So basically talking face-to-face with the
4 store owner about this transaction, you lied to his
5 face?

6 A I did lie to him, yes.

7 Q How far was he away from you when you told
8 him this lie?

9 A Three, four, feet. Close.

10 Q Third document. Again dated May 13th of
11 1998. By the way, had you ever met this store owner
12 before?

13 A No.

14 Q No. Did you have anything against him?

15 A No.

16 Q He was just doing his job, right?

17 A I suppose so, yes.

18 Q Once again, on this document which is
19 State's Exhibit 138, you again are advised that you
20 must answer the questions correctly and if you are
21 buying the gun for somebody else you can't do it.
22 Right?

23 A Yes.

1 Q Okay. And once again you signed yet a
 2 third document in which you say that you're buying
 3 the pistol for, who?

4 A For Tom Capano.

5 Q No, no, you didn't say that on this
 6 document did you?

7 A Oh I'm sorry; I said I was buying it for
 8 myself, yes.

9 Q You swore three times May 13, 1996 that
 10 the gun that you were buying was being bought for
 11 whom?

12 A Myself.

13 Q And you told us on Thursday, that the
 14 reason you would do this for him is because you loved
 15 him and you wanted basically to do what he asked you
 16 to do. Is that right?

17 A That's correct.

18 Q And you loved him so much that you were
 19 willing to commit perjury, according to your
 20 testimony now, in order to, - and which would
 21 jeopardize yourself and your family. Is that right?

22 A Yes.

23 Q That's how strong your love for him was,

1 A That is correct.

2 Q And then you met with Det. Donovan on
 3 March 13th, you may not know the dates, but they're
 4 in the police reports, and again on April 25th okay.
 5 On April 25 you were asked by Det. Donovan, okay, the
 6 same questions that I just asked you. All right?

7 And do you recall telling him at that time that the
 8 first time you spoke with the police, you were
 9 thinking about the gun and the possibility it had
 10 something to do with the case.

11 Do you remember telling him that?

12 A I don't recall that. That's possible.

13 Q The first time you spoke with the police
 14 was on July 23rd of 1996. Was it not?

15 A I believe it was.

16 Q Or thereabouts?

17 A I believe that's correct, yes.

18 Q And you don't have a recollection today
 19 that that's something that you spoke with him about,
 20 or said to him?

21 A It's possible, yes.

22 Q All right. Do you remember the day that
 23 Tom Capano's house was searched?

1 right?

2 A Yes.

3 Q When is the first time, Mrs. MacIntyre,
 4 that you began to think, - I think we talked about
 5 this last week, that this gun might have something to
 6 do with this case?

7 A In the January 28, 1998 interview.

8 Q Now that is not, is it, what you
 9 previously told Det. Donovan?

10 A Excuse me?

11 Q I said that's not what you told Det.
 12 Donovan when you spoke with him before, is it?

13 A I was questioned as to why I never
 14 connected the two. And I struggled why my thoughts
 15 to come up with why I had not, and I believe I've
 16 given the reason as to why I did not.

17 Q Okay; I think my question was, is that
 18 what you told Det. Donovan?

19 A Again, I don't remember. I met with Det.
 20 Donovan so many times, I cannot tell you
 21 specifically.

22 Q Let me be very specific. You started
 23 again, your cooperation on February 27th, right?

1 A Yes, I do.

2 Q All right. Did you speak with federal
 3 agents on that day?

4 A Yes, I did.

5 Q In particular, do you recall speaking with
 6 Agents Cobb and Desderio?

7 A Yes.

8 Q That would have been July 31st of 1996?

9 A Right.

10 Q You then spoke with Det. Donovan again
 11 before you went before the grand jury, right?

12 A That is correct.

13 Q And that would have been according to the
 14 police records that we have, September 6th of 1996.

15 A Correct.

16 Q You went before the grand jury, September
 17 10th of 1996, did you not?

18 A I did.

19 Q Okay. And then after going before the
 20 grand jury, you met again I think with Agent Alpert
 21 and others, on 2/4/97.

22 Do you remember that?

23 A Yes.

1 document was made at the exact same time, well, not
 2 the exact same time but during that same minute.
 3 Right?

4 A Yes.

5 Q So that it would be fair to conclude that
 6 the conversation that you had with Tom, on June 28,
 7 was in fact less than a minute?

8 A Yes. Could have been, yes.

9 Q Not two- to five?

10 A Could have been a minute, could have been
 11 two to five. I couldn't give you an exact time until
 12 you showed me that.

13 Q When I asked you before, you said it could
 14 be been two- to five minutes. You didn't mention a
 15 minute, did you?

16 A No, I did not.

17 Q All right. You have that conversation at
 18 approximately 10:31. And when is the next time you
 19 hear from Tom?

20 A I believe when he arrived at my home that
 21 evening.

22 Q Okay. Did you talk to him at all in the
 23 meantime?

1 A I don't recall that, no.

2 Q Okay. But, in any event, he came to your
 3 house that evening at about 11 p.m.; right?

4 A Correct.

5 Q He stayed overnight at your house, right?

6 A Yes, he did.

7 Q And he left the next day at about what
 8 time?

9 A I believe it was noon.

10 Q That's Friday. Saturday.

11 So at noon Tom leaves.

12 Now we're on Saturday, June 29th.

13 Now, after seeing him on Saturday and his
 14 departing at around noon, you spoke with him next,
 15 again, when?

16 A I believe the next day.

17 Q So, you don't recall speaking with him
 18 again on Saturday?

19 A I do not.

20 Q And we then move to Sunday. And this is
 21 when you indicate that he comes to the house at 1
 22 o'clock. Right?

23 A That is correct.

1 Q Now, you say that you had not heard of
 2 Anne Marie Fahey as of that time. Is that right?

3 A That is correct.

4 Q But when you did find out about her, you
 5 were very upset, weren't you?

6 A Yes, I was.

7 Q Basically, you say you learned on July 2nd
 8 that the man that you waited for, for all those
 9 years, and who you wanted to marry, was involved with
 10 a younger attractive woman?

11 A I don't know if those were my words; but.

12 Q But you learned that?

13 A Pardon me?

14 A But you learned that?

15 A I learned that.

16 Q How upset were you?

17 A I was upset.

18 Q Angry?

19 A I was upset.

20 Q Extremely upset, weren't you?

21 A Yes, I was.

22 Q Didn't you in fact find out about Anne
 23 Marie Fahey, not on July 2nd, but on June 27th and

1 June 28th?

2 A No, Mr. Maurer, I never heard of Anne
 3 Marie Fahey until July 2nd.

4 Q Didn't you go to 2302 Grant Avenue on June
 5 27th or June 28th with a firearm to visit Tom?

6 A Mr. Maurer, I never left my property from
 7 the time I returned home from the Ardens Swim Club
 8 until the next morning when I went to the Tatnall
 9 School.

10 Q Very strenuous about that, aren't you?

11 A I am.

12 Q Didn't you have your firearm at Tom
 13 Capano's house on June 28th of 1996, where you first
 14 learned about him and Anne Marie Fahey?

15 A No, I did not.

16 Q And you deny that your firearm discharged
 17 that night inside that house, striking her?

18 A I don't know what happened with that
 19 firearm. I gave that firearm to Tom Capano on May
 20 13th.

21 Q You deny that you discharged that firearm?

22 A I deny that I discharged that time.,

23 Q Are you absolutely certain about that?

1 A I'm certainly about that.

2 Q Are you absolutely certain?

3 A I'm absolutely certain.

4 Q Is that what you say when you're sure of
5 something?

6 A Mr. Maurer, I did not know of Anne Marie
7 Fahey until July 2nd of 1996.

8 Q Listen to my question, please.

9 You just said that you were absolutely
10 certain that you were not at Grant Avenue on June
11 27th and June 28th, didn't you?

12 A Correct.

13 Q And when you say you're absolutely
14 certain, you're telling the truth and it's true,
15 right?

16 A I'm telling the truth about this, yes, I
17 am.

18 Q Do you have your statement to the police
19 dated January 28th of 1998, in front of you?

20 A No, I do not.

21 Q Okay. Do we have that here. Yes, we do,
22 it's with the tape.

23 Would you turn to page 24, please.

1 A Yes, this was a lie.

2 Q You were then asked some additional
3 questions, talking about your security system. Mr.
4 Connolly says where you said, he says, "When did you
5 first tell him," by, "him" I think you meant Tom,
6 "that you had gotten rid of the gun?"

7 Your answer was, "Probably shortly
8 thereafter. I mean, I did it right away, probably
9 the next day I told him, say Sunday, right?"

10 A Correct.

11 Q Mr. Connolly's next question was, "And
12 what was his reaction?"

13 And your answer was what?

14 A "Got to update your security system."

15 Q Mr. Connolly then reminded you that you
16 were under oath. Did he not?

17 A Yes, he did.

18 Q And he said, "Are you -- and I want to
19 remind you that you're under oath."

20 Your answer was?

21 A "Yes".

22 Q He then asked you, "Are you absolutely
23 certain that Tom Capano never touched that gun?"

1 Now, you had told this jury that basically

2 your January 28th statement is a complete lie.

3 Right?

4 A A lot of it is, yes.

5 Q And on page 24 you used certain language
6 there to describe things that you talked about. Did
7 you not?

8 A Correct.

9 Q

Mr. Connolly said to you, "Did you discuss

10 with Tom Capano your intention to dispose of the gun

11 prior to when you got rid of it?"

12 What was your answer?

13 A "No".

14 Q Next question was, "You're very certain
15 about that?"

16 What was your answer?

17 A "Yes".

18 Q Mr. Connolly said, "Absolutely certain?"

19 And what was your answer?

20 A "I am absolutely certain about it".

21 Q So even though you indicated there that
22 you were absolutely certain about that, it was a lie,
23 wasn't it?

1 And your answer was, what?

2 A "Yes, to the best of my knowledge."

3 Q You're also I take it then, -- strike
4 that. Let me back up.

5 You were familiar with the furnishings at
6 Grant Avenue, were you not, having been there?

7 A Yes.

8 Q And in deed, you had been in that great
9 room several times, had you not?

10 A Correct.

11 Q You were familiar with the rug that was on
12 the floor of the great room prior to, sometime in
13 July, when you first noticed it was missing, right?

14 A That is correct.

15 Q How big is the great room?

16 A (No response).

17 Q Estimate?

18 A Twenty by twenty, maybe.

19 Q Did the rug cover the entire room of the
20 twenty by twenty room?

21 A Most of it.

22 Q Okay. Decent size room, decent
23 size rug, correct?

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1 Q.I asked you if you recalled the defendant said
 2 he would not be surprised if we found blood in his
 3 house. Since -- At some point, you became a member of
 4 the defense team for the defendant. Isn't that right?
 5 A.From a legal standpoint, I guess that's
 6 correct, yes.

7 Q.Okay. Now, I'm going to show you -- You also
 8 testified in front of the Grand Jury March of 1997,
 9 didn't you?

10 A.Yes, I did.

11 Q.You testified under oath?

12 A.Yes, I did.

13 Q.I'll show you what I'll have marked as State's
 14 for Identification I, and I would ask you to read Lines
 15 2 through 5 to yourself, please.

16 Okay. Now I'm going to ask you again. Did
 17 the defendant tell you in the summer of '96 that he
 18 would not be surprised if blood was found in his house?

19 A.Yes, he did, according to that testimony,
 20 which I would stand by.

21 Q.You would stand by this testimony?

22 A.Yes.

23 Q.Now, did he tell you what he thought might

1 to testify in front of the Grand Jury with the
 2 defendant before you testified?

3 A.Yes. We had lunch on a weekly basis.

4 Q.So he knew you were going into the Grand Jury?
 5 A.Yes, he did.

6 Q.And he knew he had told you all these things
 7 that would account for blood. Isn't that right?

8 A.Yes, he did.

9 Q.And he knew you were going to be under oath
 10 when you testified before the Grand Jury, didn't he?

11 A.Yes, he did.

12 Q.Now, you testified in March of 1997. Do you
 13 recall meeting the defendant on July 9, 1996 in your
 14 office?

15 A.Yes, I do.

16 Q.What did the defendant say to you when he
 17 entered your office?

18 A.We had prearranged the meeting, and he came in
 19 to tell me what his side of the story was.

20 Q.How did he appear when he came in?

21 A.He was a little upset.

22 Q.Well, do you recall telling the Grand Jury
 23 that he was distraught?

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1 account for blood in the house?

2 A.Yes, he did.

3 Q.What did he tell you?

4 A.He said, like me, we have four kids, and the
 5 kids run around all the time and always get banged up,
 6 and that could be a reason for blood. Or Annie had
 7 been over there a number of times cooking dinner, could
 8 have cut her finger, or hanging pictures up on the
 9 wall.

10 Q.This is Annie, Anne Marie Fahey?

11 A.Yes, it is.

12 Q.What else did he tell you could account for
 13 the blood in the house?

14 A.That's all.

15 Q.Didn't he say that Anne Marie Fahey was a
 16 heavy menstrual bleeder and that would account,
 17 possibly, for the blood in his home?

18 A.Yes, he did.

19 Q.Didn't he say she was such a heavy menstrual
 20 bleeder she had bled through her clothes on occasion at
 21 work and had to leave?

22 A.Yes, he did.

23 Q.Did you discuss the fact that you were going

1 A.If that's the word I used, said, distraught,
 2 yes.

3 Q.What was he?

4 A.Upset.

5 Q.And what did he tell you?

6 A.He recounted the --

7 Q.Let's go to the beginning of the conversation.

8 What did he say to you?

9 A.He asked me if I wanted to -- If I recall, he
 10 asked me if I wanted to know what had happened and what
 11 the history of their relationship was, his relationship
 12 with Anne Marie.

13 Q.And did he tell you then what happened on June
 14 27?

15 A.Yes.

16 Q.Now, what did you do when he's telling you
 17 this?

18 A.Listened.

19 Q.And after he told you, what did you do?

20 A.I suggested that we prepare some kind of
 21 statement because it had been eight, nine days, and he
 22 had not said anything or had not contacted the family,
 23 and that we should do those two things. So I prepared

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1 a one-page statement based on what he told me.
 2 Q. Did you type it in your computer?
 3 A. Yes.
 4 Q. Was he in the office when you did it?
 5 A. Yes, he was.
 6 Q. Did you print it out?
 7 A. Yes.
 8 Q. Did you give him a copy of it?
 9 A. Yes.
 10 Q. Did he look at it?
 11 A. Yes.
 12 Q. Did he appear to read it?
 13 A. Yes.
 14 Q. What did he tell you about the statement?
 15 A. He said it looked pretty good to him, and he
 16 would take it to his lawyers and get back to me in the
 17 afternoon.
 18 Q. By "looked pretty good," what did you
 19 understand that to mean?
 20 A. That it was accurate.
 21 MR. CONNOLLY: Your Honor, at this point, I
 22 would move to introduce State's Exhibit 179.
 23 MR. MAURER: Without objection, Your Honor.

1 Q. Did you ever release the statement to the
 2 public?
 3 A. I'm sorry?
 4 Q. Did you ever release the statement to the
 5 public?
 6 A. No.
 7 Q. Now, I'm going to show you State's for
 8 Identification -- Let me get it marked State's for
 9 Identification J. This is a blow-up of the same
 10 statement, isn't it?
 11 A. Yes, it is.
 12 (State's J was marked for identification.)
 13 Q. Now, Mr. Murphy, I'm going to give you back
 14 State's Exhibit 179, and I would like you, if you
 15 would, to read this slowly for us into the record.
 16 A. "Statement by Thomas J. Capano in the
 17 disappearance of Anne Marie Fahey, July 9, 1996.
 18 "The disappearance of Anne Marie Fahey remains
 19 as much a mystery to me as it does to her family and
 20 friends. I can only say I share the gut-wrenching
 21 emotions of Anne Marie's family, and pray for her safe
 22 return.
 23 "While I can do nothing to end the speculation

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1 THE COURT: Without objection, State's Exhibit
 2 179 is admitted.
 3 (State's Exhibit No. 179 was admitted into
 4 evidence.)
 5 THE COURT: You don't have a smaller copy of
 6 the exhibit?
 7 MR. CONNOLLY: I do. First I'm going to show
 8 it to the witness.
 9 BY MR. CONNOLLY:
 10 Q. Mr. Murphy, I'm going to show you State's
 11 Exhibit 179. Do you recognize that?
 12 A. Yes, I do.
 13 Q. What is it?
 14 A. It's the statement I prepared.
 15 Q. In fact, you've signed it on the bottom.
 16 Isn't that right?
 17 A. That's correct.
 18 Q. So it's a true and accurate copy of what you
 19 prepared?
 20 A. Yes.
 21 Q. And this is the same statement Mr. Capano
 22 looked at and said "looked pretty good"?
 23 A. That's correct.

1 of the public and press, I can state for the record the
 2 pertinent facts of my last meeting with Anne Marie.
 3 "I did have dinner with Anne Marie in
 4 Philadelphia on the evening of Thursday, June 27. We
 5 returned to Wilmington. We drove to her apartment at
 6 approximately 10:00 p.m. I walked Anne Marie into her
 7 apartment, stayed a few moments, said good night and
 8 left. I noticed nothing unusual as I left. That was
 9 the last time I saw or spoke to Anne Marie. I then
 10 drove home, where I remained until I left for the
 11 office the next morning.
 12 "While Anne Marie had some problems, there was
 13 nothing out of the ordinary in either her conversation
 14 or behavior that would lead me to believe anything was
 15 amiss. I am at a complete loss to explain what caused
 16 her disappearance.
 17 "It is difficult to respond as to how others
 18 may characterize our relationship. Frankly, the nature
 19 of our relationship is and will remain a matter between
 20 Anne Marie and myself. What is relevant and important
 21 is that Anne Marie and I are good friends and parted
 22 company good friends that evening.
 23 "I was informed of Anne Marie's potential

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2 Q. I'm going to show you what's been marked or
3 introduced, rather, as State's Exhibit 210. Do you
4 recognize that?

5 A. Yes. That's the invoice for the carpeting
6 that we bought.

7 Q. All right. And now I'm going to show you
8 State's Exhibit 215. Do you recognize that?

9 A. Yes. That's the sample of the carpeting that
10 we gave to you when you called us up and asked us about
11 it.

12 Q. Okay. And basically, you were contacted by
13 the investigators. Right?

14 A. Yes.

15 Q. And you gave that sample to whom?

16 A. To Detective Donovan, I believe.

17 Q. The gentleman seated there?

18 A. That gentleman right over there.

19 MR. CONNOLLY: No further questions,
20 Your Honor.

21 THE COURT: Mr. Oberly?

22 MR. OBERLY: I have no questions.

23 THE COURT: All right. I presume Mr. Marks

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Q. And did you go to his home on June 24, 1996?

2 A. Yes, I did.

3 Q. You're checking your calendar in front of you,
4 I take it.

5 A. Yes.

6 Q. Did you go on July 22, 1996?

7 A. Yes, I did.

8 Q. And that would have been four Mondays later
9 from June 24. Is that right?

10 A. Yes.

11 Q. Now, did you go on July 8, 1996?

12 A. No.

13 Q. Why didn't you go on Monday, July 8, 1996?

14 A. Because Mr. Capano called and said that they
15 had been away for the holiday weekend, and the house
16 did not need to be cleaned.

17 Q. Now, when you went to the house the next time,
18 on July 22, was anything different?

19 A. Yes.

20 Q. What was different?

21 A. The sofa was missing and the carpet had been
22 taken up, and an area rug was there.

23 Q. And in what room were these changes made?

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1 may be excused also.

2 MR. CONNOLLY: I don't think we'll be
3 recalling him.

4 THE COURT: Thank you very much, Mr. Marks.
5 You're excused.

6 MR. CONNOLLY: Your Honor, the State calls
7 Ruth Boylan.

8 RUTH BOYLAN, having been called on the part
9 and behalf of the State as a witness, being first duly
10 sworn under oath, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CONNOLLY:

13 Q. Good morning, Mrs. Boylan.

14 A. Good morning.

15 Q. Mrs. Boylan, in 1996, did you work as a
16 housekeeper for Thomas Capano?

17 A. Yes, I did.

18 Q. How often would you go to clean his home?

19 A. Every other week.

20 Q. And was his home located at 2302 Grant Avenue?

21 A. Yes.

22 Q. What day of the week would you go?

23 A. Monday.

1 A. Excuse me?

2 Q. In what room of the house were these changes
3 made?

4 A. Well, I would call it a den, and it had a
5 dining area.

6 Q. Was there a dining room table in this room?

7 A. Yes.

8 Q. And was it kind of off of the kitchen?

9 A. Yes.

10 Q. Was it above the garage, if you remember?

11 A. Yes. Well, I don't know that it was over the
12 garage, but it was a floor above the garage.

13 Q. The couch that you said was missing, what did
14 that couch look like?

15 A. It was a deep rose with a pineapple print or
16 motif.

17 Q. And was the motif a different color or was it
18 kind of a solid color?

19 A. Might have been a little lighter.

20 Q. And was the -- What kind of condition was the
21 couch in when you had seen it, let's say, on June 24,
22 1996?

23 A. Very good.

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1 Q. And you can't tell us whether the shot that
 2 was fired came from the bottom, out the side, or from
 3 the side through the bottom. Correct?

4 A. No, sir.

5 Q. You can tell us that it was a bullet that
 6 caused it?

7 A. A projectile, bullet, or slug of some sort.

8 MR. OTERI: Nothing else, Your Honor.

9 MR. WHARTON: Nothing further, Your Honor.

10 THE COURT: Mr. Ennis, thank you for your
 11 testimony. You're excused.

12 THE WITNESS: Thank you, Your Honor.

13 MR. WHARTON: Kenneth Chubb.

14 KENNETH CHUBB, having been called on the part
 15 and behalf of the State as a witness, being first duly
 16 sworn under oath, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WHARTON:

19 Q. Mr. Chubb, good afternoon.

20 Where do you live, sir?

21 A. Elmertown, Pennsylvania.

22 Q. Where is that located?

23 A. Right near Hershey.

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1 A. Yes, we did.

2 Q. You say "we." Who are you talking about?

3 A. I'm talking about my son, his wife, and three
 4 children, and my wife and I.

5 Q. Did you all go out fishing?

6 A. We all went fishing, right.

7 Q. Let me ask you if, when you were out, over
 8 that weekend, you found anything out in the water.

9 A. Yes, I did. In the afternoon, we were
 10 finished fishing, and we started back in. I started
 11 the engines up, and started to head for home, and my
 12 boy said, "I see something floating over there, Dad."
 13 He said, "What is that?" I said, "Let's go over and
 14 take a look."

15 Q. Where were you? About how far out were you?

16 A. Between 8 and 10 miles.

17 Q. Off Indian River?

18 A. Off Indian River, correct.

19 Q. After your son called your attention to
 20 whatever it was that was floating over there, what did
 21 you do?

22 A. I pulled alongside this, and he said, "It's a
 23 cooler." And I said, "Well, grab ahold of it and pull

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1 Q. Do you have any connection to Delaware?

2 A. Yes. We've been going to Delaware since
 3 1981. We have a place down there and a boat.

4 Q. Where is your place?

5 A. The mailing address is Millsboro, Delaware.

6 It's off of Long Neck Road, in a park called Bay City.

7 Q. That would be near Rehoboth Bay?

8 A. Right off Rehoboth Bay, near Indian River.

9 Q. I think you said you had a boat.

10 A. Yes.

11 Q. Are you a fisherman?

12 A. Yes, I am.

13 Q. How long have you been going down to Bay City?

14 A. We've been at Bay City since 1986.

15 Q. Do you know a fellow by the name of Ronald
 16 Smith?

17 A. Yes, I do. He has his boat right next to
 18 mine.

19 Q. I want to ask you if you can go back to the
 20 July 4th weekend of 1996. Were you down at your place
 21 during that weekend?

22 A. Yes, we were.

23 Q. Did you go out fishing that weekend?

1 it in the boat."

2 Q. Did he do that?

3 A. Yes, he did. He dumped the water out and
 4 pulled it in. It didn't have a lid, and it was missing
 5 a handle.

6 Q. What else did you notice about it?

7 A. It had two bullet holes in it. And this sort
 8 of amazed us all. We were questioning, wondering why
 9 anybody would shoot it. Looked like a brand new
 10 cooler.

11 Q. What did you do with it?

12 A. I put it on board the boat, because I had an
 13 old one sitting there with the fish in it that was all
 14 beat up. It was real old and the bottom was smashed.
 15 And I thought, Well, I can take the top off of mine and
 16 the handle, and I'll convert this one, and patch them
 17 two holes, and I can make myself a nice cooler.

18 Q. Did you bring it into shore?

19 A. Yes, I did. Brought it back into Bay City and
 20 docked the boat.

21 Q. Did you see Mr. Smith when you came back in?

22 A. When I docked the boat, I put this cooler over
 23 on the dock, and Ron was working on his boat. I said,

1 subjects that we discussed?

2 A Yes.

3 Q And were you under oath at that time as
4 well?

5 A I'm not sure we discussed anything about
6 Gerry -- or anything else but the cooler.

7 Q And his interest in boats?

8 A I'm not sure we discussed that either. We
9 may have.

10 Q Whatever is in the transcript is what is
11 there?

12 A Yes.

13 Q You were under oath then too?

14 A Yes.

15 Q Let's talk a little bit about the cooler.

16 Did you have any conversations in the spring of 1996
17 with your brother Tom relating to his desire to buy a
18 present for Gerry?

19 A Yes.

20 Q Tell us about those conversations.

21 A March, April of '96, I was at my mother's
22 home. Tom was there. He expressed a desire to get
23 something for Gerry, a multiple gift, if you would,

1 something that expressed his appreciation for Gerry
2 treating his daughters as well as he had the previous
3 summer, and the anticipation of spending a lot of
4 time at the shore the coming summer. He wanted to
5 get Gerry something because he assumed his children
6 would be spending a lot of time at Gerry's house,
7 using all Gerry's water toys.

8 Q Did Tom have anything in particular in mind
9 at that time?

10 A No.

11 Q Did you make any suggestions to him?

12 A Yes.

13 Q What did you suggest that he buy for Gerry?

14 A Well, at the time I was involved with the
15 possibility of the construction at the Sports
16 Authority, so I had been on the 202 job where they
17 have the store and looking at their inventory, and we
18 were deciding whether or not we were going to do this
19 job. And I noticed that they have quite a bit of
20 fishing equipment there, and I suggested to Tom that
21 he go there and purchase something, and a cooler was
22 one of the things that I suggested because Tom has no
23 knowledge of fishing or boating and couldn't possibly

1 THE COURT: Has any member of the jury come
 2 into contact with any information concerning this case
 3 since we recessed last week?

4 (No response.)

5 THE COURT: There are no affirmative answers.
 6 Again, I assure you we have been working this
 7 morning.

8 Mr. Oteri.

9 MR. OTERI: Thank you, your Honor.

10 Defense calls Dr. Carol Tavani.

11 -----
 12 CAROL A. TAVANI, M.D., having been called on
 13 the part and behalf of the Defendant, having been duly
 14 sworn according to law, was examined and testified as
 15 follows:

16 -----
 17 DIRECT EXAMINATION

18 -----
 19 BY MR. OTERI:

20 Q. Would you state your full name, please?

21 A. Dr. Carol A. Tavani.

22 Q. And where do you practice, Doctor?

23 A. I practice at Christiana Hospital.

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1 Q. Are you certified by any specialty boards?
 2 A. Yes. By the American Board of Psychiatry and
 3 Neurology.

4 Q. That's board certification?

5 A. That's board certification. I got that in
 6 '85.

7 Q. And how do you get that?

8 A. Well, that consists of a two-day examination,
 9 first written, and then after the written exam is
 10 passed, there's an oral examination which is given.

11 Q. And you received that in 1985?

12 A. Yes.

13 Q. And are you a Fellow of any kind of --

14 A. Yes. I'm a Life Fellow of the American
 15 Psychiatric Association.

16 Q. What does that include? What does that mean?

17 A. That is a distinction. It's rather simple to
 18 become a member of one's professional organization,
 19 but fellowship demands that you've met certain
 20 criteria, that you've had certain honors or
 21 distinctions.

22 Q. All right. And are you a Diplomate of any
 23 particular organization?

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1 Q. And that's in?

2 A. That's in Newark, Delaware.

3 Q. All right.

4 And are you a doctor of -- medical doctor?

5 A. Yes.

6 Q. All right. And where did you receive your
 7 education?

8 A. I went to Cabrini College in Radnor,
 9 Pennsylvania; then Villanova University, Jefferson
 10 Medical College, the Medical Center of Delaware, now
 11 Christiana Care Health Systems, and then Jefferson
 12 again for residency.

13 Q. All right. And you became a physician in
 14 what year, Doctor?

15 A. 1979.

16 Q. And are you licensed in any state?

17 A. Delaware.

18 Q. What year were you licensed in?

19 A. 1979 --

20 Q. Might I suggest '80?

21 A. -- or '80.

22 Q. Okay.

23 A. Internship.

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1 A. Diplomate of, again, the APA, the American
 2 Psychiatric Association, National College of Forensic
 3 Examiners. Several organizations.

4 Q. You are not a forensic psychiatrist, are you?

5 A. No, I'm not.

6 Q. You are a -- what kind of psychiatrist?

7 A. I am an in-the-trenches physician. What I
 8 mainly do and what my major expertise is
 9 neuropsychiatric difficulties in people who have some
 10 disorder of the brain in people who are hospitalized,
 11 have medical or surgical problems, problems after
 12 surgery, problems after trauma, after head injuries,
 13 some insult to the brain, and the pharmacology
 14 therein. That's my area.

15 Q. And you -- as you told us you practice at
 16 Christiana. Do you practice anywhere else?

17 A. Yes. I spend a good 15 hours a week in the
 18 correctional system with Prison Health Services
 19 treating the inmates both at Gander Hill and at the
 20 women's prison.

21 Q. And you are employed there by an organization
 22 that has a contract with Gander Hill?

23 A. I'm employed there by Prison Health Systems.

1 was in his own best interests. His thought processes
2 just were not on target.

3 MR. OTERI: Thank you, Doctor.

4 Judge, this may be an appropriate time for
5 lunch.

6 THE COURT: All right. We will take the
7 luncheon recess. According to my watch it's five
8 minutes to 1:00. We will come back at 2:00 o'clock.
9 We will start on time.

10 Please take the jury out.

11 (Thereupon, the jury was excused for lunch.)

12 THE COURT: Court will stand in recess until
13 2:00 o'clock.

14 -----

15 (Thereupon, the luncheon recess was taken at
16 12:55 p.m., and then the proceedings continued as
17 follows at 2:10 p.m.)

18 -----

19 THE COURT: Please bring the jury in.

20 (Thereupon, the jury returned to the
21 courtroom.)

22 THE COURT: Dr. Tavani should resume the
23 stand.

1 MR. OTERI: Your Honor, the record may
2 indicate that I had to move the podium. My rear end
3 was blocking the witness from the view of the press.
4 I've done what they asked by moving the podium.

5 (Pause.)

6 BY MR. OTERI:

7 Q. All right. Now, Dr. Tavani, are you familiar
8 with a psychiatric term called "confabulation"?

9 A. Yes, I am.

10 Q. And can you tell us what that term means?

11 Define it, if you will.

12 A. Okay. Confabulation is really a rather
13 well-known neuropsychiatric symptom wherein you have a
14 brain that --

15 THE COURT: Just a second. We lost your
16 voice.

17 THE WITNESS: It's falling off.

18 (Pause.)

19 THE WITNESS: Can I be heard?

20 THE COURT: Yes.

21 THE WITNESS: Thank you.

22 MR. OTERI: Can you hear her back there?

23 THE WITNESS: Confabulation is a situation

1 (Dr. Tavani resumed the stand at 2:10 p.m.)

2 MR. OTERI: Your Honor, may we approach?

3 MR. O'DONNELL: Regarding scheduling.

4 THE COURT: Concerning scheduling?

5 MR. O'DONNELL: Yes, sir.

6 THE COURT: You may come forward.

7 (The following proceedings were held at the
8 bench, out of the hearing of the jury.)

9 MR. OTERI: Your Honor, defendant offers Dr.
10 Tavani's notes subject to a redaction of sorts after I
11 go through them.

12 THE COURT: All right.

13 Mr. Wharton.

14 MR. WHARTON: We don't object to that.

15 THE COURT: All right. So this will be
16 admitted as Defense Exhibit 28 subject to a review by
17 the parties concerning any redactions that need to be
18 made before it goes to the jury.

19 MR. OTERI: Thank you, your Honor.

20 -----

21 (Evidence was marked for identification by
22 the Prothonotary as Defendant's Exhibit Number 28.)

23 -----

1 that is seen in diffuse organic brain disease or
2 malfunction wherein gaps occur in the memory. Spaces
3 occur almost like holes in Swiss cheese. And what the
4 mind does when these gaps occur is that it -- it tries
5 to fill these gaps in to make some sort of sense out
6 of reality. And the way it does this is, it inserts
7 things that either the person thinks must have been
8 what happened or maybe the person has heard that these
9 things happened or it might have been suggested to the
10 person or even asked as a question. But the person
11 who has these gaps in memory then takes this
12 understanding of what must have been or what was asked
13 of him or her, and the person inserts this into the
14 spaces to fill the gaps. And then this hybrid, if you
15 will, becomes the person's new truth. It becomes the
16 person's new memory.

17 I think that would be a simple explanation of
18 confabulation.

19 BY MR. OTERI:

20 Q. Do alcohol and illicit drugs -- how do they
21 affect the brain and this condition?

22 A. Well, confabulation historically is -- was
23 best known to occur in alcoholics. We have almost 100

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1 even said. He doesn't remember most of what he said
 2 and he either admits to what he doesn't remember or he
 3 says it must have been; I'll believe you if you say
 4 so.

5 This is a generality of those three pages,
 6 without being -- putting you through the whole
 7 recitation, if that's okay.

8 Q. Doctor, is it fair to say you have
 9 approximately two more pages of these kinds of
 10 examples?

11 A. I couldn't hear the beginning.

12 Q. Is it fair to say that you have approximately
 13 two more pages --

14 A. Yes.

15 Q. -- of this kind of --

16 A. Yes. There are two more pages of these
 17 kinds.

18 Q. Doctor, after reading these transcripts and
 19 making these lists up, do you have an opinion as to
 20 whether or not Gerry suffers from confabulation and
 21 amnestic disorder?

22 A. He does suffer from confabulation, and he
 23 unquestionably suffers from a serious amnestic

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1 Q. All right. What is that opinion?

2 A. Well, in general it can be said that -- with
 3 regard to the relationship I assume you're asking me.

4 Q. Go ahead.

5 A. His state of mind, the e-mails indicate a
 6 very warm, affectionate, cordial relationship really
 7 throughout. The letters that I have date from 7/21/95
 8 to 6/27.

9 Q. I would appreciate, Doctor, if you don't
 10 refer to the e-mails as letters because we have other
 11 letters in this case.

12 A. I'm sorry. The e-mails. The e-mails.

13 They're friendly. They're jocular. They're mutually
 14 solicitous. There's mutual caring and concern
 15 evident. There's a desire to please each other
 16 throughout them. They both express frequent thoughts
 17 of each other as well as love which will last forever.
 18 There's interest expressed in each other's lives as
 19 well as sharing of various intimacies of each other's
 20 daily life events. There's mutual solicitation to see
 21 each other. There's a statement of Miss Fahey asking
 22 like if Mr. Capano is free, 2/1 correspondence.

23 On 2/7 there's a statement wherein she

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1 disorder. In fact, he may actually suffer from
 2 dementia. I could not definitively say that because I
 3 have not personally examined Gerry. I would have to
 4 know a little bit more about his mental status
 5 specifically. I didn't want to go as far as to say
 6 this had progressed into dementia, but it is
 7 certainly, at the very least, a severely amnestic
 8 disorder with confabulation.

9 Q. Okay. And, Doctor, you had -- in preparing
 10 for your testimony here, you had provided to you by
 11 the defense team a series of e-mails. Can you take
 12 those e-mails out, please, Doctor?

13 A. Sure.

14 (Pause.)

15 I have the e-mails.

16 Q. Okay.

17 Now, Doctor, based upon your study of the
 18 e-mails between Anne Marie Fahey and Tom Capano, and
 19 vice versa, do you have an opinion based upon a
 20 reasonable psychiatric certainty about Tom Capano's
 21 states of mind during that period of time, January 1
 22 through June 27th?

23 A. Yes, I do.

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1 expresses her wish that the relationship be platonic.
 2 She wants to be just friends. He accepts the limits
 3 that she sets and says he will continue to be there
 4 for her on her terms.

5 On 2/12 there was one -- there was one
 6 negative one. She references an incident where he had
 7 been calling very, very frequently, and the details of
 8 that are unclear, but it clearly caused her to feel
 9 distance since she was able to tell him that.

10 However, then in the same letter she apologizes for
 11 her own behavior and she asks where he was the
 12 previous night.

13 There's a jocular, affectionate letter on
 14 2/13, and then these communications -- the e-mails
 15 come to an abrupt halt until the 29th of April and
 16 then pick up with the same affectionate tone and
 17 poking fun at each other, essentially with resumption
 18 of the same dynamics, I would say, and patterns as in
 19 the earlier set.

20 And the letters continue through May and
 21 those of June '96 begin, on 6/3, with his asking her
 22 to dinner and reminding her about matters of self-care
 23 and self-nurturance, which did he frequently in these

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1 MR. OTERI: Okay. Thank you.

1 Q. Okay. In any event, baseboard and radiator

2 (The following proceedings were held within
3 the hearing of the jury.)2 cover are not typical places you would expect to find
3 menstrual blood having been shed as a result of4 MR. O'DONNELL: Based on that, we withdraw
5 the objection.

4 intercourse; correct?

6 THE COURT: Thank you.

5 A. I suppose, unless you had it on your hands

7 BY MR. WHARTON:

6 and you touched something.

8 Q. All right. Now, you're aware, are you not,
9 Doctor, from having reviewed Dr. Bryer's notes that
10 there are things in there that the patient told his
11 doctor, Dr. Bryer, within the context of his
12 psychiatrist/patient relationship which are
13 inconsistent with the notion that Anne Marie Fahey
14 died on June the 27th of 1996?7 Q. Now, also you were aware, were you not, that
8 he told Dr. Bryer that he took Anne Marie Fahey back
9 to his apartment after their night together on the
10 27th and he heard nothing further from her?

11 A. Yes.

11 A. Yes. I saw that.

12 Q. Okay. Specifically when was the first time
13 that Dr. Bryer and the defendant met?12 Q. That he initially believes she left for the
13 weekend to collect her thoughts and he now believes
14 she may have been a victim of random violence in her
15 neighborhood or perhaps isolating herself somewhere?14 A. It was -- I'll just flip to the date --
15 8/16/96.

14 A. Correct.

16 Q. Okay. And in that 8/16/96 note, doesn't he
17 say about halfway down the page there that he denied
18 any involvement in her disappearance as well as any
19 violence towards her?15 Q. And that he recognizes that suicide is a
16 possibility but can't explain why her body hasn't
17 turned up.

18 A. Correct.

19 Q. Okay. And this is a meeting -- this was the
20 first meeting he had with Dr. Bryer --

21 A. Correct.

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1 A. Yes, he does.

1 Q. -- which was on August the --

2 Q. Okay. And do you know, do you not, from the
3 representations that have been made in court that he
4 did at least have a role in her disappearance?

2 A. 16th.

5 A. Yes, I do.

3 Q. -- 16th of 1996?

6 Q. You also know that he attempted to provide
7 Dr. Bryer with an explanation for blood in his
8 apartment or house?

4 A. Correct.

9 A. Yes, I do.

5 Q. Correct?

10 Q. And that states that they would only have
11 intercourse, he and Anne Marie Fahey, while she was
12 menstruating?

6 A. Correct.

13 A. Yes.

7 Q. Correct?

14 Q. And that the menstrual blood of Anne Marie
15 Fahey resulting from their intercourse would be what
16 the FBI would find in his house?

8 A. Correct.

17 A. Yes, he said that.

9 Q. Okay. Now, on August the 23rd of 1996, once
10 again he's in this conversation with Dr. Bryer and he
11 is the patient and Dr. Bryer is the psychiatrist?18 Q. And are you aware that blood matching Anne
19 Marie Fahey's, at least to the odds of one in 11,000
20 that could be anyone else's, was found on a baseboard
21 and radiator cover?

12 A. Yes.

22 A. I'm not certain whether I knew that or not to

13 Q. And he's -- he tells Dr. Bryer that he feels
14 grief over her disappearance, slash, loss?

23 A. Yes.

15 A. Yes.

24 A. Do I know if his mother was ever

16 Q. Of someone that he cared for deeply about?

25 A. Correct.

17 A. Correct.

26 A. Do I know if his mother was ever

18 Q. Okay. Well, he also complains about an
19 intensive interrogation of his 73-year-old mother?

27 A. Yes.

20 A. Yes.

28 A. Do I know if his mother was ever

21 Q. Do you know if his mother was ever

29 A. Interviewed?

22 A. Do I know if his mother was ever

30 A. Do I know if his mother was ever

23 A. Do I know if his mother was ever

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1 next witness is
 2 Please bring the jury in at this time.
 3 (Jury entered the courtroom at 11:55 a.m.)
 4 THE COURT: Mr. Oteri, would you call your
 5 next witness?

6 MR. OTERI: Thank you, your Honor.

7 The defense calls Thomas Capano.

8 THOMAS J. CAPANO, having been called on the
 9 part and behalf of the Defendant, having been duly
 10 sworn according to law, was examined and testified as
 11 follows:

12 -----

13 DIRECT EXAMINATION

14 -----

15 BY MR. OTERI:

16 Q. State your name, please, sir.

17 A. Thomas Joseph Capano.

18 Q. Thirty seconds and you wreck things.

19 A. Yeah, I know.

20 Q. How are you feeling? Are you all right?

21 A. No. I don't mean that in any way. I'm
 22 perfectly competent to testify. I'm just -- I just
 23 mean I'm nervous.

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1 A. Okay.
 2 Q. Tom, I would like you to tell the jury about
 3 your background as it concerns your family, your
 4 parents. As a kid growing up, what was it like?
 5 A. Okay. This is kind of important to me,
 6 Ladies and Gentlemen.

7 Q. Tom, can you pick the mike up a little so
 8 they can hear you?

9 A. That way (indicating)?

10 Q. Yes.

11 A. I started to say that this part is pretty
 12 important to me because I've been portrayed as a
 13 spoiled rich kid born with a silver spoon in my mouth.

14 MR. CONNOLLY: Your Honor, we're going to
 15 object. We're not going through his life history.

16 MR. OTERI: The defendant is on trial for his
 17 life. The Government has painted a saintly picture of
 18 Anne Marie Fahey and a demonic picture of the
 19 defendant.

20 THE COURT: Background information. I'm not
 21 interested in a complete life story.

22 Certainly take that information that you
 23 think is relevant and I'll overrule the objection to

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1 Q. Are you on medications?

2 A. Yes, I am.

3 Q. What did you take today?

4 A. Um, Wellbutrin, Xanax, Lomotil and Tylenol.

5 I took that once. I'll take it again at two o'clock.

6 Q. Tom, you heard Dr. Tavani testify here for a
 7 couple of days, did you not?

8 A. Yes, I did.

9 Q. You heard her description of you having
 10 scattered thoughts and trouble concentrating.

11 Do you have that condition right now?

12 A. Yes.

13 Q. Are you having trouble concentrating
 14 answering questions?

15 A. I will.

16 Q. Okay. So that I will take my time and you
 17 take your time answering. Don't feel upset at all.
 18 If you can't grab a word, just take your time. Okay?

19 A. Yeah.

20 Q. All right?

21 A. I ramble.

22 Q. Okay. We will give you all the time in the
 23 world to get concentrated.

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1 that extent.

2 I would expect, again, Mr. Capano's responses
 3 be in answer to your inquiries, rather than simply an
 4 unimpeded presentation to the jury.

5 BY MR. OTERI:

6 Q. Please continue, Tom.

7 A. I come from a blue-collar background. My
 8 father was a carpenter. All my uncles were in the
 9 building trades. Both of my grandfathers were
 10 immigrants. One was a stonemason. One was a
 11 bricklayer. Most of my first cousins were in the
 12 building trades. I come from a background of people
 13 who worked with their hands. My brother Louis did.
 14 My dad did go into the business not long before I was
 15 born. He said he was always proud of the fact his
 16 first job was to build an outhouse. But he, you know,
 17 ultimately was fairly successful. I was educated in
 18 the local parochial school.

19 Q. Excuse me, Tom. Before you get to that. Do
 20 you have brothers and sisters?

21 A. Yeah.

22 Q. Tell us.

23 A. Yes. I have an older sister Marian. And I'm